

**IMMIGRATION LAWS
OF THE
UNITED STATES**

SECOND EDITION



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IMMIGRATION LAWS OF THE UNITED STATES


SECOND EDITION

A textbook integrating statutes, regulations, administrative practices and leading court and administrative decisions, with a comprehensive index, citation guide and bibliography.

By

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INTRODUCTION

During the six years since the publication of the first edition of "Immigration Laws of the United States" the immigration statutes have undergone far-reaching changes; implementing regulations have been thoroughly overhauled; and the courts and administrative agencies have rendered important decisions interpreting the law. Four supplements, the last published in 1959, have kept the readers of the first edition informed of these developments.

The second edition, while following the style and general outline of the first edition, deals with the subject matter in greater detail. Practically all chapters of the previous volume have been rewritten and expanded. Particular emphasis has been placed on the growing body of court and administrative decisions. Twelve new chapters treat, among other topics, the immigration of children, the parole of aliens into the United States, NATO aliens, the visa refusal and its review, refugee and emergency legislation, and temporary legislation for the benefit of orphans, agricultural workers and other special groups. Great care has again been devoted to the preparation of the index. A new chapter, "The American Immigration System—An Outline," serves as a synopsis of the subject matter and as an additional guide to the chapters of the book.

The present volume covers all statutes enacted by the 86th Congress and all regulations, Presidential proclamations and administrative decisions published through December 24, 1960. The bibliography has been brought up to date and contains references to the legislative history of all enactments in the immigration field since 1952.

The author is greatly indebted to his wife and to Miss Martha D. Yates for their helpful and untiring assistance with both manuscript and proofs.

Frank L. Auerbach

January, 1961

INTRODUCTION TO FIRST EDITION

The immigration laws of the United States consist, in their broader sense, of statutes, treaties and regulations. With the enactment of the Immigration and Nationality Act in 1952 reference to statutory law has been greatly facilitated inasmuch as that Act has consolidated the many statutes which it superseded. Nevertheless, a full understanding of immigration law depends on a knowledge of implementing regulations—published by three independent agencies of the government—the practices and rulings of these agencies and pertinent decisions.

The purpose of this book is to analyze and present in integrated form—for the benefit of both practitioner and student—the principal provisions of the immigration laws, their legislative history, the regulations issued under them, prevailing administrative practices and the major decisions relating to the interpretation of the immigration provisions of the Immigration and Nationality Act.

To facilitate reference to the various editions of the Immigration and Nationality Act a Citation Guide is appended which relates the citations to the public law used in this volume to those of the Statutes-at-Large, the United States Code and the Federal Code Annotated. Abbreviations and citations used in the text are explained on another page.

To make the book more useful to the student of American immigration policy and to those who wish to trace the legislative history of certain provisions of the present statute, the first chapter summarizes the history of American immigration law. A selected bibliography may be of assistance to those who desire to undertake a more comprehensive study.

The author is greatly indebted to Mr. Edward S. Maney, Director of the Visa Office, Department of State, and to Mr. Elliot B. Coulter, Assistant Director, for reading the manuscript and for their helpful comments; and to Miss Martha D. Yates for her assistance and suggestions in connection with the manuscript and proof. The author also wishes to express his deep appreciation to the Penrose Fund of the American Philosophical Society which made the preparation of this manuscript possible. He owes much also to those with whom he has had the privilege of collaborating over the years in interpreting the immigration laws of the United States.

Frank L. Auerbach

December, 1954

ABBREVIATIONS AND CITATIONS

- "BIA" (Board of Immigration Appeals)
- "Central Office" (Central Office of the Immigration and Naturalization Service)
- "CFR" (Code of Federal Regulations)
- "Cir." (Circuit)
- "F.C.A." (Federal Code Annotated)
- "Fed. (2d)" (Federal Reporter, Second Series)
- "Fed. Reg." (Federal Register)
- "F. Supp." (Federal Supplement)
- "H. J. Res." (House Joint Resolution)
- "I. & N. Dec." (Administrative Decisions under Immigration and Nationality Laws of the United States)
- "Interim Decisions" (Decisions of BIA and Central Office prior to publication in "I. & N. Dec.")
- "L. ed." (Lawyers' Edition, Supreme Court Decisions)
- "NATO" (North Atlantic Treaty Organization)
- "Op. Atty. Gen." (Opinions of the Attorney General)
- "Section" (Section of Immigration and Nationality Act, Public Law 414, 82nd Congress)
- "Service" (Immigration and Naturalization Service)
- "Stat." (Statutes-at-Large)
- "Sup. Ct." (Supreme Court Reporter)
- "TIAS" (Treaties and other International Acts Series, Department of State)
- "TS" (Treaty Series, Department of State)
- "U.S." (United States Supreme Court Decisions, Official)
- "U.S.C." (United States Code)
- "UST" (United States Treaties and other International Agreements, Department of State)

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PART I
GENERAL

CHAPTER 1

HISTORY OF AMERICAN IMMIGRATION POLICY

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§ 1. Authority to formulate immigration policy.—The United States as a politically sovereign state has the power to encourage, tolerate, restrict or prohibit the entrance of aliens into its territories, and to terminate by deportation their sojourn within its boundaries.

The authority to formulate American immigration policy rests with the Congress of the United States. This authority is contained in Article I, Section 8, Clause 3 of the Constitution which provides that Congress shall have the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Ever since Congress under this constitutional authority began to pass laws regulating immigration, the Supreme Court has recognized the exclusive authority of Congress in the field of immigration policy. Summarizing the Court's view, Justice Frankfurter stated in part:

"The conditions for entry of every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, the grounds on which such determination shall be based, have been recognized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control. Courts do enforce the requirements imposed by Congress upon officials in administering immigration laws and the requirement of Due Process may entail certain procedural ob-

servances. But the underlying policies of what classes of aliens shall be allowed to stay, are for Congress to determine"¹

§ 2. **Trends of immigration policy.**—Of the four basic courses a sovereign country can follow in formulating its immigration policy—unrestricted immigration, qualitative restriction, quantitative restriction, and prohibition of all immigration—the United States, since 1921, has followed the second and third courses by imposing both qualitative and quantitative restrictions on aliens seeking to enter the United States as immigrants. This period was preceded by some forty-five years of qualitative restrictions and this period, in turn, by more than one hundred years of immigration unrestricted by federal legislation.

The Alien Act of June 25, 1798,² was the first federal legislation dealing with the expulsion of aliens in the United States. This measure which authorized the President to deport any alien whom he deemed dangerous to the United States expired two years after its enactment. From then until the year 1875 there was no federal legislation restricting the admission to, or permitting the deportation of aliens in, the United States. Congress, during this period, enacted a number of laws which were designed to protect the immigrant by requiring steamship lines to improve the conditions on vessels by limiting the number of passengers in proportion to the tonnage of the vessels and by requiring that sufficient supplies of food and water be carried on board.

With the sharp increase of the volume of immigration beginning in 1830³ a marked anti-alien feeling developed in the United States primarily directed against the preponderantly Catholic immigration from Ireland. Bills were considered by Congress, but failed of enactment, which proposed some of the measures which later on became part of American immigration law, principally the exclusion of certain undesirable classes, like criminals and paupers, and the requirement of certificates to be issued immigrants by American consuls abroad to the effect that these immigrants did not fall within any of the excludable classes.

In the absence of federal legislation various States which had to carry the expense of caring for sick, destitute or otherwise dependent immigrants passed laws in an attempt to protect themselves against these risks. The statutes of New York,

¹ *Harisiades v. Shaughnessy* (1952), 342 U. S. 580, 96 L. ed. 586, 72 Sup. Ct. 512.

² 1 Stat. 570.

³ See ch. 50 for statistics on immigration.

California, Louisiana and Massachusetts provided, for example, for a tax on each immigrant, for inspection of immigrants by State officials, and for bonds in the case of aliens considered unable to be self-supporting. The Supreme Court, however, held these State statutes unconstitutional on the ground that the power to legislate concerning the immigration and deportation of aliens rested exclusively with the Congress of the United States.⁴

§ 3. **Qualitative restrictions of immigration.**—The lack of any control over the movement of immigrants into the United States as a result of the Supreme Court decisions and the increasing volume of immigration finally led Congress to the enactment of the first federal law since the Alien Act of 1798 restricting the movement of immigrants. The Act of March 3, 1875, excluded from admission criminals and prostitutes and entrusted the inspection of immigrants to collectors of the ports.⁵ After this Act had first established the policy of federal restriction on immigration, a broader immigration law, enacted on August 3, 1882,⁶ added to the classes of inadmissible aliens lunatics, idiots, and persons unable to take care of themselves without becoming a public charge. It also introduced a head tax of 50 cents on each passenger brought to the United States.

§ 4. **Contract labor laws.**—In response to the complaints of labor organizations that certain employers were lowering the standards of American labor by importing cheap foreign labor, often by misrepresenting the opportunities in the United States, Congress in 1885 and 1887⁷ passed the so-called contract labor laws which made it unlawful to import aliens into the United States under contract for the performance of labor or services of any kind. Exceptions were made in these laws for aliens temporarily in the United States, and for artists, lecturers, servants, and skilled aliens working in an industry not yet established in the United States. An amendment to these laws in 1888⁸ introduced for the first time since the Alien Act of 1798 a provision for the expulsion of aliens. The 1888 Act directed the return within one year after entry of any immigrant who had landed in violation of the contract labor laws. The Supreme Court upheld the constitutionality of this act.⁹

⁴ *Henderson v. Mayor* (1876), 92 U. S. 259, 23 L. ed. 543; *Chy Lung v. Freeman* (1876), 92 U. S. 275, 23 L. ed. 550.

⁵ 18 Stat. 477.

⁶ 22 Stat. 214.

⁷ Act of Feb. 26, 1885 (23 Stat. 332) and Act of Feb. 23, 1887 (24 Stat. 414).

⁸ Act of Oct. 19, 1888 (25 Stat. 566).

⁹ *Lees v. United States* (1893), 150 U. S. 476, 37 L. ed. 1150, 14 Sup. Ct. 163.

§ 5. **Exclusion of criminal, immoral, dependent and subversive aliens.**—With immigration reaching an all-time high toward the end of the 19th Century, additional restrictive laws were passed by Congress adding to the classes of aliens inadmissible to the United States. Persons suffering from a loathsome or dangerous contagious disease, felons, persons convicted of other infamous crimes or misdemeanors involving moral turpitude, polygamists, and aliens assisted by others to come were added to the inadmissible classes in 1891.¹⁰

The Act of March 3, 1903¹¹ introduced significant new features into American immigration law. In addition to making inadmissible into the United States epileptics, persons who had been insane within five years prior to application for admission, persons who had had two or more attacks of insanity, and professional beggars, the act also made inadmissible "anarchists, or persons who believe in, or advocate, the overthrow by force or violence of the Government of the United States, or of all government, or of all forms of law, or the assassination of public officials." Thus, this act for the first time provided for the exclusion of aliens on the ground of proscribed opinions. It also extended to three years after entry the period during which an alien who was inadmissible at the time of entry could be deported. Furthermore, it provided for the deportation of aliens who became public charges within two years after entry from causes existing prior to their landing.

As a result of a further increase of immigration and in response to Presidential messages to Congress, new restrictive provisions were added to the immigration laws by the Act of February 20, 1907.¹² This act increased the head tax to \$4.00 and added to the excludable classes imbeciles, feeble-minded persons, persons with physical or mental defects which may affect their ability to earn a living, persons afflicted with tuberculosis, children unaccompanied by their parents, persons who admitted the commission of a crime involving moral turpitude, and women coming to the United States for immoral purposes. Professional actors, artists, singers, ministers, professors, and domestic servants were exempted from the provisions of the contract labor law. Authority to deport an alien who had become a public charge from causes which existed before the alien's entry was extended to cover a three-year period after entry.

¹⁰ Act of Mar. 3, 1891 (26 Stat. 1084).

¹¹ 32 Stat. 1213.

¹² 34 Stat. 898.

§ 6. **Joint Commission on Immigration.**—The Act of 1907 also created a Joint Commission on Immigration consisting of three members of the Senate, three members of the House of Representatives, and three other persons to make an investigation of the immigration system of the United States. This Commission completed its investigation by 1911 and published its report in forty-two volumes. This study became the basis for the comprehensive Immigration Act of February 5, 1917¹³ which remained the basic act until December 24, 1952.

§ 7. **Gentlemen's Agreement with Japan.**—The Immigration Act of 1907 also authorized the President to refuse admission to certain persons when he was satisfied that their immigration was detrimental to labor conditions in the United States. This provision was a result of the growing alarm, particularly on the West Coast and in States adjacent to Canada and Mexico, that labor conditions would be seriously affected by a continuation of the high rate of admission of Japanese laborers. While the Japanese Government opposed the emigration of its subjects to the continental United States, passports entitling them to go to Hawaii, Mexico and Canada were being used to gain entrance into the continental United States. On the basis of the 1907 Act the President, on March 14, 1907, issued a proclamation excluding from the continental United States "Japanese and Korean laborers, skilled or unskilled, who had received passports to go to Mexico, Canada or Hawaii and come therefrom."¹⁴

This proclamation was implemented by the so-called "Gentlemen's Agreement" reached in 1907 and 1908 between the Governments of the United States and of Japan, according to which the Japanese Government was to issue passports for travel to continental United States only to those of its laborers who were former residents of the United States or to parents, wives or children of residents of the United States and to settled agriculturists.¹⁵ This agreement was strengthened in a note attached by the Ambassador of Japan to the Treaty of Commerce between Japan and the United States of 1911¹⁶ in which he stated that his government was fully prepared to maintain the limitation and control exercised for the past three years in regulating the immigration of laborers to the United States.¹⁷

¹³ 39 Stat. 874.

¹⁴ Executive Order No. 589; see also Executive Order No. 1712 of Feb. 24, 1913.

¹⁵ Report of Commissioner General of Immigration for the year 1908.

¹⁶ 37 Stat. 1504.

¹⁷ House Report No. 1365 of Feb. 14, 1952, 82nd Congress, Second Session, p. 19.

§ 8. **Immigration of Chinese.**—While the laws so far described dealt with immigration in general, separate legislation dealt with the problem created by the immigration of Chinese persons. The first treaty in which the emigration of the inhabitants from their country to the United States was considered was the Burlingame Treaty between China and the United States, proclaimed on July 28, 1868.¹⁸ This pact recognized the inherent right of man to change his home and allegiance and guaranteed to Chinese subjects such “privileges, immunities and exemptions in respect to travel and residence” in the United States as might be enjoyed by the citizens or subjects of the most favored nations. The tremendous influx of Chinese immigrants to the West led to the conclusion on November 17, 1880 of another treaty with China¹⁹ which became the basis for the Act of May 6, 1882, the first of the so-called Chinese Exclusion Acts.²⁰ This act provided for suspension of immigration of Chinese laborers to the United States for a period of ten years. It did permit, however, Chinese laborers already in the United States to re-enter the country after a temporary absence. Chinese illegally in the United States were ordered deported. The 1882 Act which also barred Chinese from naturalization did not prohibit, however, the entry of Chinese teachers, students, merchants or those “proceeding to the United States . . . from curiosity.” This act was extended from time to time, last on April 27, 1904 when it was extended without time limit.²¹ The 1904 Act remained in effect until December 17, 1943²² when all Chinese exclusion laws were repealed and Chinese persons were made eligible for immigration and naturalization.²³

§ 9. **Immigration Act of February 5, 1917.**—The Immigration Act of February 5, 1917,²⁴ passed as a result of the growing demand for more effective restrictions on immigration, codified all previously enacted exclusion provisions and added to the inadmissible classes illiterate aliens, persons of constitutional psychopathic inferiority, men as well as women entering for immoral purposes, chronic alcoholics, stowaways, vagrants and persons who had a previous attack of insanity. The most controversial provision of the 1917 Act was the so-called literacy requirement

¹⁸ 16 Stat. 739.

¹⁹ 22 Stat. 826.

²⁰ 22 Stat. 58.

²¹ 33 Stat. 428.

²² 57 Stat. 600.

²³ For a fuller discussion of American immigration policy regarding Chinese persons, see Hackworth, *Digest of International Law*, Vol. III, p. 776; and Riggs, *Pressures on Congress*, New York, 1950.

²⁴ 39 Stat. 874.

excluding aliens over sixteen years of age who were unable to read. A bill providing for a literacy test for immigrants was first passed by Congress in 1897 but was vetoed by President Cleveland, and similar bills were subsequently vetoed by Presidents Taft and Wilson. The 1917 Act which was passed over President Wilson's veto placed the literacy requirement on the statute book. In addition, it laid down further restrictions on the immigration of Asian persons by creating the so-called barred zone, natives of which were declared inadmissible to the United States. The barred zone roughly included parts of China, all of India, Burma, Siam, the Malay States, the Asian part of Russia, part of Arabia, part of Afghanistan, most of the Polynesian Islands and the East Indian Islands.

The 1917 Act broadened considerably the classes of aliens deportable from the United States and introduced the requirement of deportation without statute of limitation in more serious cases.

§ 10. Laws against anarchists and alien enemies; entry and departure control.—On October 16, 1918, Congress passed a law ²⁵ excluding alien anarchists and others believing in or advocating the overthrow of the government. On May 10, 1920, an act ²⁶ was passed calling for the deportation of alien enemies and aliens convicted of violating or conspiracy to violate various war acts.

The Act of May 22, 1918,²⁷ the so-called Entry and Departure Controls Act, authorized the President to control the departure from, and entry into, the United States in times of war or national emergency, of any person whose presence was deemed contrary to public safety. The Act of March 2, 1921,²⁸ provided that those provisions of the Entry and Departure Controls Act relating to passport and visa requirements of aliens seeking to come to the United States should continue in force until otherwise provided by law.

§ 11. The Quota Law of 1921.—The unsettled conditions in Europe after the first World War resulted in new demands for restriction on immigration which culminated in the enactment of the so-called First Quota Law of May 19, 1921.²⁹ This Act limited the number of aliens of any nationality entering the United States to three per cent of foreign-born persons of that

²⁵ 40 Stat. 1012.

²⁶ 41 Stat. 593.

²⁷ 40 Stat. 559.

²⁸ 41 Stat. 1217.

²⁹ 42 Stat. 5.

nationality who lived in the United States in 1910. Under this law approximately 350,000 aliens were permitted to enter each year as quota immigrants, mostly from Northern and Western Europe. The law which originally was to expire on June 30, 1922, was later extended until June 30, 1924.³⁰

The Quota Law of 1921 represented a drastic change in American immigration policy. Up to its enactment, laws restricting immigration were all qualitative in character, in other words, they provided that certain classes of aliens were inadmissible into the United States. The new act introduced in addition to these qualitative restrictions, quantitative restrictions by putting a ceiling on the total number of aliens whose admission into the United States as immigrants was permitted during any one year. The law exempted from this limitation, among others, children under eighteen years of age of United States citizens and aliens who had resided continuously in one of the independent countries of the Western Hemisphere for at least five years immediately preceding their application for admission. Also exempt from the numerical limitations, and thereby placed on a nonquota basis, were actors, artists, lecturers, singers, nurses, ministers, professors, aliens belonging to any recognized learned profession and aliens employed as domestic servants. The Act accorded quota preference status to wives, parents, brothers, sisters, and fiancées of American citizens and of aliens in the United States who had applied for citizenship, as well as to certain honorably discharged veterans.

§ 12. Immigration Act of 1924—National origins quota system.—On May 26, 1924, a permanent Immigration Quota Act was passed³¹ which, in conjunction with the Act of 1917, governed American immigration policy until the Immigration and Nationality Act became effective in 1952.

The Immigration Act of 1924 strengthened and clarified a number of the earlier provisions of law and introduced new concepts of immigration policy which have become the basis for similar provisions in the Immigration and Nationality Act of 1952.

(a) **Consular control—Double check system.** The 1924 Act established the rule that no immigrant may be admitted to the United States unless he has an unexpired immigration visa issued by an American consular officer abroad. Thus, Congress gave legislative sanction to the visa requirement which had first been established as a war-time measure by Joint Order of the

³⁰ Act of May 11, 1922 (42 Stat. 540).

³¹ 43 Stat. 153.

Department of State and the Department of Labor on July 26, 1917.³² American consuls were authorized to issue an immigration visa only if the alien met the qualitative tests of the immigration laws and a quota number was available for the particular immigrant unless he was a nonquota immigrant. This system of consular control eliminated to a great extent the hardship which in the past was created by a large number of aliens arriving in United States ports only to be excluded and deported for lack of quota numbers or for membership in one of the inadmissible classes.

The introduction of the consular control system abroad left unchanged the authority of the Immigration and Naturalization Service to control the admission of aliens at United States ports. Thus, a system of double check or dual control was established under which officers of two independent governmental agencies, consular officers of the Department of State at the time of visa issuance, and officers of the Immigration and Naturalization Service at the time of the alien's application for admission into the United States, have to pass on his admissibility as an immigrant. If either agency found the alien inadmissible he was either refused a visa or excluded at a port of entry.³³

(b) **Quotas.** The 1924 Act, as amended, contained two quota provisions. The first one, in effect until June 30, 1929, set the annual quota of any quota nationality at 2 per cent of the number of foreign-born persons of such nationality resident in continental United States in 1890. The total quota under this provision was 164,667. The second provision regulating quotas from July 1, 1929, to December 31, 1952, introduced the much-debated national origins quota system. Under it the annual quota for any country or nationality had the same relation to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin had to the total number of inhabitants in continental United States in 1920. Since no quota was to be smaller than 100, the total quotas prior to January 1, 1953, amounted annually to 154,277.³⁴

(c) **Uniting families.** By various provisions of the 1924 Act Congress expressed an intent not to separate families by migration, and to facilitate the reunion of separated families. To achieve this end nonquota status was accorded to the wives and children of American citizens, and preference quota status to

³² *Laws Applicable to Immigration and Nationality*, 1953, p. 1042.

³³ For a fuller discussion of the double check system see ch. 3.

³⁴ For a fuller discussion of the quota system see ch. 8.

husbands and parents of American citizens, and to wives and children of permanent resident aliens. The law, however, discriminated against women in that an alien wife preceding her husband could not confer preference quota status on him, and an American citizen wife, under the original version of the act, could only confer preference quota status on her alien husband. Subsequent amendments permitted the American citizen wife to confer nonquota status on her alien husband if marriage was contracted prior to the enactment of the respective amendments. These and other provisions of law discriminating against women remained in effect until the enactment of the Immigration and Nationality Act.³⁵

(d) **Aliens ineligible to citizenship not admissible.** The 1924 Act introduced the novel provision that, as a rule, no alien ineligible to citizenship shall be admitted to the United States as an immigrant. This provision was primarily aimed at the continuing influx of Japanese aliens who found their way into the United States in spite of the so-called "Gentlemen's Agreement." During the life of this agreement, it was found, the United States had acquired more Japanese immigrants than any other English-speaking country in the world. The continuation of such increase, Congress felt in 1924, would be detrimental both to Japan and to the United States.³⁶

§ 13. **Summary of immigration legislation 1925 to 1952.**— During the twenty-eight years between the enactment of the Immigration Act of 1924 and the passage in 1952 of the Immigration and Nationality Act, Congress passed a great number of amendments to the immigration laws of the United States, the more significant of which are summarized below.

(a) **Registry Act.** The so-called "Registry Act" of March 2, 1929,³⁷ took cognizance of the fact that a great number of aliens were unable to establish their lawful admission to the United States because they had either entered without compliance with the law or because a record of their admission could not be found. Therefore, the act authorized the establishment of a record of lawful admission in the case of certain aliens not ineligible to citizenship in whose case no record of admission for permanent residence could be found and who could prove that they had entered the United States before June 3, 1921. The basic provisions of this Act were incor-

³⁵ For an analysis of the status of women under the immigration laws of 1917 and 1924, see *Interpreter Releases*, Jan. 2, 1948, p. 1.

³⁶ House Report No. 1365, *supra*, p. 20.

³⁷ 45 Stat. 1512.

porated in the Nationality Act of 1940 and are now, in modified form, part of the Immigration and Nationality Act.³⁸

(b) **Alien Registration Act.** The Act of June 28, 1940, cited as the Alien Registration Act, 1940,³⁹ passed as a protective measure, provided for the registration and fingerprinting of all aliens, prescribed additional deportable classes, including aliens convicted of smuggling or assisting in the illegal entry of other aliens. Two more significant changes brought about by this act were:

(1) an amendment to the Act of October 16, 1918, making past membership—in addition to present membership—in proscribed organizations and subversive classes of aliens grounds for exclusion and deportation; and

(2) an amendment to the Immigration Act of 1917 authorizing in certain meritorious cases voluntary departure in lieu of deportation, and suspension of deportation.

Under the suspension of deportation procedure the status of a deportable alien can be adjusted to that of an alien lawfully admitted for permanent residence if the alien meets certain qualifications, the Attorney General approves of his application and if Congress concurs in the Attorney General's action. As enacted in 1940 this procedure was not available to aliens deportable as criminals, subversives, or mentally or physically unfit aliens. Also ineligible for suspension of deportation were aliens ineligible to naturalization, including those ineligible by reason of race. By Act of July 1, 1948,⁴⁰ relief by suspension of deportation was made available to aliens regardless of the fact that they were ineligible for naturalization by reason of race.

(c) **"Gigolo Act."** The Act of May 14, 1937,⁴¹ the so-called "Gigolo Act," made deportable from the United States any alien who, at any time after entering the United States, was found to have secured a visa through fraud by contracting a marriage which subsequent to entry into the United States had been judicially annulled retroactively to the date of the marriage. It also provided that an immigrant should be subject to deportation if he fails or refuses to fulfill his promises for a marital agreement made to procure his entry as an immigrant.

(d) **Public Safety Act.** The Public Safety Act of June 20, 1941,⁴² directed consular officers to refuse a visa to any alien

³⁸ See ch. 40.

³⁹ 54 Stat. 670.

⁴⁰ 62 Stat. 1206.

⁴¹ 50 Stat. 164.

⁴² 55 Stat. 252.

who seeks to enter the United States for the purpose of engaging in activities which would endanger the public safety of the United States.

(e) **Chinese, East Indians and Filipinos.** On December 17, 1943, the Chinese Exclusion Laws were repealed and Chinese made eligible for immigration and naturalization. A special quota of 105 was established for Chinese persons, in addition to the existing quota of 100 for non-Chinese persons born in China.⁴³

By Act of July 2, 1946, persons belonging to races indigenous to India were made eligible for immigration and naturalization.⁴⁴

The Philippine Independence Act of 1934 established a quota of fifty for the Philippine Islands^{44a} which was increased to 100 in 1946.^{44b}

(f) **War brides and fiancées.** To help solve the problem of members of the American armed forces who, during World War II, had married nationals of foreign countries, Congress passed the so-called War Brides Act of December 28, 1945,⁴⁵ which waived visa requirements and those provisions of the immigration law excluding physical and mental defectives. During the three years of this law's existence, 117,999 aliens were admitted to the United States, 113,135 being war brides, 327 war grooms, and 4,537 children. An act facilitating the admission of fiancées of members of the American armed forces, the so-called G.I. Fiancées Act, became law on June 29, 1946.⁴⁶ Under this act, as amended, more than 5,000 alien fiancées and fiancés were admitted to the United States.

The Act of August 19, 1950, as amended, made spouses and minor children of members of the American armed forces, regardless of the alien's race, eligible for immigration and non-quota status if marriage had occurred before March 19, 1952.⁴⁷ This measure benefited primarily aliens of Japanese and Korean ancestry.

(g) **Displaced persons legislation.** In order to resolve the problem created by the unwanted presence in Germany, Austria and Italy of more than one million displaced persons, President Truman attempted to facilitate the immigration of some

⁴³ 57 Stat. 600.

⁴⁴ 60 Stat. 416.

^{44a} § 8 (a)(1) of the Act of March 24, 1934 (48 Stat. 456).

^{44b} Proclamation No. 2696 of July 4, 1946 (11 Fed. Reg. 7517).

⁴⁵ 59 Stat. 659.

⁴⁶ 60 Stat. 339, 62 Stat. 84, 63 Stat. 56.

⁴⁷ 64 Stat. 464, 65 Stat. 5.

of these aliens by a Directive of December 22, 1945,⁴⁸ according to these aliens a priority in the issuance of immigration visas. However, it developed that only a small contribution to the solution of this tremendous population problem could be made under the terms of the Presidential Directive—less than 40,000 displaced persons were admitted to the United States during its life from December 22, 1945 to June 30, 1948. Congress, after a thorough study of the problem, in 1948, passed the Displaced Persons Act.⁴⁹ This measure permitted the admission of up to 205,000 displaced persons during the two-year period beginning July 1, 1948. The Act of June 16, 1950⁵⁰ extended the life of the Displaced Persons Act to June 30, 1951, and its application to war orphans and German expellees and refugees to July 1, 1952. It also increased the grand total of persons who could be admitted under the act to 415,744. The Act of June 28, 1951 again amended the Displaced Persons Act by extending its operations for another six months until December 31, 1951.⁵¹

Displaced persons were admitted only on assurance before their arrival in this country that they would have employment and housing and would not become public charges. They had to meet certain eligibility requirements in addition to those of the regular immigration laws. Particular stress was laid on sifting out any politically undesirable individuals. Displaced persons were charged against the future quota of their country of birth if these quotas were currently oversubscribed. Through June 30, 1953, 399,698 persons were admitted to the United States under the Displaced Persons Act of 1948, as amended. Of those admitted some 33 per cent were born in Poland (including the Ukraine), 15 per cent in Germany, 9 per cent in Latvia, 8 per cent each in the Soviet Union and in Yugoslavia, 6 per cent in Lithuania, and the remainder in a score of other countries. Forty-seven per cent were Catholic, 35 per cent Protestant or Orthodox, 16 per cent Jewish and 2 per cent did not identify their religious affiliation.⁵²

(h) **Internal Security Act.** The Internal Security Act, enacted by Congress over the President's veto on September 23, 1950, amended various immigration laws with a view toward strengthening security screening in cases of aliens in the United States or applying for entry.⁵³ The more significant provisions of this act were the following:

⁴⁸ *Interpreter Releases*, Feb. 28, 1946, p. 50.

⁴⁹ Act of June 25, 1948 (62 Stat. 1009).

⁵⁰ 64 Stat. 219.

⁵¹ 65 Stat. 96.

⁵² See U. S. Displaced Persons Commission, *Memo to America: The D.P. Story*, Washington, 1952.

⁵³ 64 Stat. 987.

(1) Present and former membership in the Communist party or any other totalitarian party or its affiliates was specifically made a ground for inadmissibility;

(2) Aliens in the United States who, at the time of their entry or by reason of subsequent actions would have been inadmissible under the provisions of the Internal Security Act, were made deportable regardless of the length of their residence in the United States;

(3) The discretion of the Attorney General to admit otherwise inadmissible aliens temporarily, and in some instances permanently, was curtailed;

(4) The Attorney General was given authority to exclude and deport without a hearing an alien whose admission would be prejudicial to the public interest if the Attorney General's finding was based on confidential information, the disclosure of which would have been prejudicial to the public interest, safety or security of the United States;

(5) The Attorney General was given authority to supervise deportable aliens pending their deportation and was also given greater latitude in selecting the country of deportation. However, deportation of an alien was prohibited to any country in which he would be subjected to physical persecution;

(6) Any alien deportable as a subversive, criminal, or member of the immoral classes who willfully failed to depart from the United States within six months after the issuance of the deportation order was made liable to criminal prosecution and could be imprisoned up to ten years;

(7) Every alien residing in the United States subject to alien registration was required to notify the Commissioner of Immigration and Naturalization of his address within ten days of each January first on which he resided in the United States.

(i) **Laws facilitating the admission of labor.** To meet seasonal or other passing labor shortages in the United States various temporary measures have facilitated the admission of laborers as nonimmigrants from the Western Hemisphere. One such act, a war measure "to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto . . . during continuation of hostilities in the present war" exempted alien laborers from the provisions of the contract labor laws and subjected them to summary deportation if they failed to depart from the United States in

accordance with the terms of their admission.⁵⁴ Agricultural workers, particularly from Mexico and the British West Indies, have also been admitted through the exercise by the Attorney General of the authority vested in him by the Ninth Proviso to Section 3 of the Immigration Act of 1917 to admit temporarily otherwise inadmissible aliens.⁵⁵ More recent legislation intended to facilitate the temporary admission of seasonal farm labor is contained in Title V of the Act of October 31, 1949, as amended, cited as the Agricultural Act of 1949.⁵⁶

To provide relief for the sheep-raising industry, the Act of June 30, 1950⁵⁷ authorized that during a one-year period 250 special quota immigration visas be issued to skilled sheepherders chargeable to oversubscribed quotas. For each visa issued one number was ordered deducted from the appropriate quota for the first year such quota was available. The issuance of 500 additional immigration visas to sheepherders was authorized by the Act of April 9, 1952.⁵⁸

(j) **Admission of aliens in the interest of national security.** The admission of a limited number of aliens in the interest of national security has been facilitated by the Act of June 20, 1949.⁵⁹ This act, also cited as the Central Intelligence Agency Act of 1949, provides in Section 8 that whenever the Director of the Central Intelligence Agency, the Attorney General, and the Commissioner of Immigration determine that the entry of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family may be given entry into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations or to their failure to comply with such laws and regulations pertaining to admissibility. The number of aliens and members of their immediate families entering the United States under the authority of this law which was not affected by the enactment of the Immigration and Nationality Act may in no case exceed 100 persons in any one fiscal year.

§ 14. The Immigration and Nationality Act.

(a) **Summary.** The Immigration and Nationality Act was enacted by Congress over President Truman's veto on June 27,

⁵⁴ Joint Resolution of April 29, 1943, 57 Stat. 70; see also 61 Stat. 55.

⁵⁵ 39 Stat. 874.

⁵⁶ See ch. 52, § 6.

⁵⁷ 64 Stat. 306.

⁵⁸ 66 Stat. 50.

⁵⁹ 63 Stat. 212.

1952 and became effective on December 24, 1952.⁶⁰ This act, which governs present American immigration policies, brought within one comprehensive statute the multitude of laws which, before its enactment, governed immigration and naturalization in the United States.

In general, the Immigration and Nationality Act, sometimes referred to as the McCarran-Walter Act or the Walter-McCar-ran Act after its sponsors in Senate and House, perpetuates the immigration policies of the earlier statutes with some significant modifications. Different from the earlier laws, the 1952 act:

- (1) made all races eligible to naturalization and eliminated race as a bar to immigration,
- (2) eliminated discrimination between sexes with respect to immigration,
- (3) introduced a system of selective immigration by giving a quota preference to skilled aliens whose services are urgently needed in the United States,
- (4) placed a limit on the use of the governing country's quota by natives of colonies and dependent areas,
- (5) provided an escape clause permitting the immigration of certain former voluntary members of proscribed organizations,
- (6) broadened the grounds for exclusion and deportation of aliens,
- (7) curtailed procedures for the regularization of status of aliens in the United States to that of permanent resident aliens, and
- (8) provided greater procedural safeguards to aliens subject to deportation.

(b) **Senate study.** The groundwork for the new act was laid when the Senate, in 1947, authorized an investigation and study of the immigration and naturalization systems of the United States.⁶¹ Carrying out the mandate of this resolution, staff members of the Senate Subcommittee on Immigration made inquiries into the operation of the immigration and nationality laws and heard testimony from representatives of Government and of voluntary civic, social and nationality organizations.

⁶⁰ 66 Stat. 163.

⁶¹ Senate Resolution 137, 80th Congress, First Session.

The findings of the Senate Judiciary Committee, based on this staff study, were submitted to the Senate on April 20, 1950, in the form of a 925-page report, *The Immigration and Naturalization Systems of the United States*.⁶²

(c) **Senate bills.** Also on April 20, 1950, Senator Pat McCarran of Nevada, Chairman of the Senate Judiciary Committee, introduced S. 3455, the first omnibus bill "to revise the laws relating to immigration, naturalization and nationality and for other purposes," proposing a codification in one statute of all immigration and nationality laws and significant changes in the then existing law.

A revised version of this first omnibus bill was introduced into the Senate by Senator McCarran on January 29, 1951. This bill, S. 716, incorporated various changes proposed by governmental and nongovernmental agencies and organizations.

(d) **House bills.** A companion omnibus immigration and nationality bill was introduced in the House of Representatives on February 5, 1951 by Representative Francis E. Walter of Pennsylvania, Chairman of the House Subcommittee on Immigration. An omnibus immigration bill, H.R. 2196, following the outline of the other bills but containing a number of far-reaching liberalizing provisions was introduced on February 2, 1951 by Representative Emanuel Celler of New York, Chairman of the House Judiciary Committee.

(e) **Joint hearings.** In March and April of 1951 House and Senate Subcommittees on Immigration held joint hearings on the omnibus immigration bills introduced by Senator McCarran and Representatives Celler and Walter. Some sixty witnesses representing Government and various civic, social and nationality organizations, and other interested groups, including the legal profession and the shipping interests, testified.⁶³

A third version of the omnibus bill, S. 2055, reflecting various changes urged during the hearings, was introduced by Senator McCarran on August 27, 1951. Representative Walter, on October 9, 1951, introduced in the House a revised companion omnibus bill, H. R. 5678.

(f) **Committee reports—Minority action.** Soon after the 82nd Congress reconvened for its second session the Senate

⁶² Senate Report No. 1515, 81st Congress, Second Session.

⁶³ *Revision of Immigration, Naturalization and Nationality Laws, Joint Hearings before the Subcommittees of the Committees on the Judiciary, Congress of the United States, 82nd Congress, First Session, printed for the use of the Committees on the Judiciary, Washington, 1951.*

Judiciary Committee, on January 29, 1952, reported favorably S. 2055.⁶⁴ The House Judiciary Committee followed suit on February 14, 1952, when it reported favorably H. R. 5678.⁶⁵ A group of thirteen Senators, led by Senator Humphrey of Minnesota and Senator Lehman of New York, introduced on March 12, 1952, a bill, S. 2842, following the outline of the earlier omnibus immigration and nationality bills but differing greatly from them in its more liberal provisions. This bill, while following the national origins system, proposed to modify it by setting up a so-called pool of quotas not used by the countries to which they were allotted and permitting their redistribution in the following year to immigrants selected on the basis of criteria apart from their national origin.

(g) **Passage of bill.** On April 25, 1952, after a three-day debate the House of Representatives passed, with only minor amendments, Representative Walter's bill, H. R. 5678. The vote was 206 to 68.

After nearly two weeks of debate the Senate, on May 22, 1952, passed by voice vote Senator McCarran's bill. Differences between the House and Senate versions were reconciled in conference on June 9, 1952.⁶⁶ The conference report was adopted by the House on June 10 by a vote of 203 to 53. The Senate followed this action on June 11, 1952, with an unrecorded vote.

(h) **Veto and final passage.** On June 25, 1952, President Truman vetoed the bill.⁶⁷ The House overrode the President's veto by a vote of 278 to 113 on June 26. On June 27, 1952, the Senate overrode the President's veto by a vote of 57 to 26 and the Immigration and Nationality Act became law.

§ 15. Legislation since the Immigration and Nationality Act.

(a) **Action by 83rd Congress.** The 83rd Congress, in an effort to alleviate problems created during the post-war period and to meet certain specific labor needs, passed three laws in the immigration field.

(1) **Refugee Relief Act of 1953.** The concern of the United States about the overpopulation problem in Europe and the economic and political threat created by refugees and escapees from behind the Iron Curtain led to the enactment of the Act of August 7, 1953.⁶⁸ This Act, cited as the Refugee

⁶⁴ Senate Report No. 1137, 82nd Congress, Second Session.

⁶⁵ House Report No. 1367, 82nd Congress, Second Session.

⁶⁶ House Report No. 2096, 82nd Congress, Second Session.

⁶⁷ House Document 520, House of Representatives, 82nd Congress, Second Session.

⁶⁸ Public Law 203, 83rd Congress (67 Stat. 400).

Relief Act of 1953, permitted 214,000 aliens to become permanent residents of the United States, in addition to those whose admission is authorized by the Immigration and Nationality Act. Of these 214,000 aliens, 205,000 were refugees and escapees from Communist persecution or from natural calamity or military operations and close relatives of American citizens or of permanent resident aliens of the United States; 4,000 were orphans; and 5,000 were aliens who had come to the United States as nonimmigrants and were permitted to acquire permanent resident status if they could not return abroad because of persecution or fear of persecution on account of race, religion, or political opinion. Liberalizing amendments to the Act became law on August 31, 1954.⁶⁹

(2) **Immigration of orphans.** The Act of July 29, 1953,⁷⁰ authorized the issuance of 500 special nonquota immigrant visas to orphans under ten years of age adopted abroad or to be adopted in the United States by United States citizens serving abroad in the United States Armed Forces or employed abroad by the United States Government. The purpose of this legislation was primarily to relieve American servicemen and citizens abroad who had adopted infants from delay created by the fact that the Immigration and Nationality Act, as originally enacted, did not accord to any adopted children the non-quota status which is available to natural alien children of American citizens.⁷¹

(3) **Nonquota status for certain sheepherders—Modification of general immigration laws.** To meet the need of the sheep-raising industry, the Act of September 3, 1954,⁷² made 385 special nonquota immigrant visas available to skilled sheepherders chargeable to oversubscribed quotas, most of them Spanish. A rider to this measure exempts from inadmissibility to the United States aliens who have committed not more than one petty offense.⁷³

(b) **Action by 84th Congress.** Two immigration measures of relatively limited scope were enacted by the 84th Congress.

(1) **Exchange visitors.** The Act of June 4, 1956, tightened the conditions under which exchange visitors who had

⁶⁹ Public Law 751, 83rd Congress (68 Stat. 1044). For a full discussion of the provisions of the Refugee Act see ch. 40, First Edition; see also *Final Report of the Administrator of the Refugee Relief Act of 1953*, Washington, 1958.

⁷⁰ Public Law 162, 83rd Congress (67 Stat. 229).

⁷¹ Subsequent amendments accorded nonquota status to certain adopted children of United States citizens; see (c)(2).

⁷² Public Law 770, 83rd Congress (68 Stat. 1145).

⁷³ See ch. 33, § 5.

come to the United States under the provisions of the United States Information and Educational Exchange Act of 1948 may immigrate to the United States or become temporary workers. The measure requires a two-year residence abroad in a cooperating country before a former exchange visitor may be issued an immigrant visa or a nonimmigrant visa as a temporary worker.⁷⁴ The purpose of this requirement is to prevent exchange visitors from defeating the objectives of the exchange program by accepting, at the termination of their visit, permanent or temporary employment in the United States, rather than making their newly acquired knowledge and skills available to their own country.

(2) **Narcotic violators.** The Narcotic Control Act of 1956 tightened admission and deportation provisions relating to aliens convicted of narcotic violations.⁷⁵

(c) **Action by 85th Congress.** The 85th Congress, without basically changing existing immigration policy, in fact modified significantly some of its underlying concepts. Several of the enactments carried out some of the recommendations for changes in immigration law made by the President.

(1) **Removal of "mortgages" from future quotas.** The Act of September 11, 1957,⁷⁶ reinstated the deductions from future quotas, sometimes referred to as "mortgages," which were required to be made under the Displaced Persons Act of 1948 and the so-called Shepherd Acts.

(2) **Nonquota status for orphans.** The same act accorded nonquota status until June 30, 1959, to an unlimited number of children adopted or to be adopted by American citizens.

(3) **Nonquota status for backlogged preference cases.** Also, the Act of September 11, 1957, granted nonquota status to immigrants for whom first, second, or third preference quota status had been approved before July 1, 1957, thereby relieving temporarily pressures on oversubscribed quotas. The Act of August 21, 1958,⁷⁷ extended in the case of first preference quota immigrants the cut-off date for their conversion to non-quota immigrants from July 1, 1957, to July 1, 1958.

(4) **Use of Refugee Relief Act visas and other emergency legislation.** The issuance of 18,656 special nonquota immigrant

⁷⁴ Public Law 555, 84th Congress (70 Stat. 241). See ch. 33, § 28.

⁷⁵ Public Law 728, 84th Congress, Act of July 18, 1956 (70 Stat. 575). See ch. 33, § 21 and ch. 45, § 12.

⁷⁶ Public Law 85-316 (71 Stat. 639).

⁷⁷ Public Law 85-700 (72 Stat. 699).

visas which remained unused at the expiration of the Refugee Relief Act on December 31, 1956, was also authorized by the Act of September 11, 1957.⁷⁸ These visas were to be distributed among German expellees, Netherlands refugees and "refugee-escapees," i.e., victims of racial, religious or political persecution from Communist countries or countries in the Middle-East area.⁷⁹

In addition, the 85th Congress passed two special immigration measures, the Act of July 25, 1958⁸⁰ which authorized the permanent admission of aliens paroled into the United States after the Hungarian Revolution of October, 1956 and the Act of September 2, 1958,⁸¹ authorizing the issuance before July 1, 1960, of 3,136 special nonquota immigrant visas to nationals or citizens of the Netherlands who had been displaced from the Republic of Indonesia since January 1, 1949, and 1,500 such visas to nationals or citizens of Portugal who had been displaced as a result of the earthquakes and volcanic eruptions in the Azores Islands since September 1, 1957. The accompanying husbands, wives, and children of such aliens were to be issued special nonquota immigrant visas without numerical limitation.⁸²

(5) **Creation of record of lawful admission.** The Act of August 8, 1958⁸³ liberalized existing law by authorizing the creation of a record of lawful admission for certain aliens in whose case no such record is available, if they entered the United States before June 28, 1940, as against July 1, 1924, under prior law, and by making the benefits of this provision available to aliens deportable for technical grounds.

(6) **Waiving of fingerprinting for nonimmigrants.** The Act of September 11, 1957, in response to strong recommendations by the President, authorized the Secretary of State and the Attorney General on a basis of reciprocity to waive the requirement of fingerprinting in the case of nonimmigrants.⁸⁴

(7) **Liberalizing adjustment of status.** The Act of August 21, 1958⁸⁵ significantly liberalized the change of status pro-

⁷⁸ 71 Stat. 643.

⁷⁹ For a full discussion of this provision see pp. 145-149 of the 1959 Supplement to First Edition.

⁸⁰ Public Law 85-559 (72 Stat. 419).

⁸¹ Public Law 85-892 (72 Stat. 1712).

⁸² The provisions of the acts passed by the 85th and 86th Congress are discussed in detail in the pertinent chapters; for a discussion of the Act of September 11, 1957, see also Auerbach, "Recent Developments in the Immigration Field," *Department of State Bulletin*, December 30, 1957.

⁸³ Public Law 85-616 (72 Stat. 546). See ch. 40.

⁸⁴ Public Law 85-316 (71 Stat. 641). See ch. 31.

⁸⁵ Public Law 85-700 (72 Stat. 699). See ch. 39.

cedure for aliens applying for permanent immigrant status while in the United States by removing the requirement that the applicant must have maintained his bona fide nonimmigrant status until the time of his application for change of status, by making it available to spouses of American citizens irrespective of the date of marriage and to other aliens entitled to nonquota immigrant status except natives of contiguous territory and adjacent islands. Previous law made the procedure unavailable to nonquota immigrants except spouses of American citizens who had married not earlier than one year after their admission to the United States.⁸⁶

(8) **Technical amendments.** The more important technical amendments to the immigration laws enacted by the 85th Congress include provisions vesting discretionary authority in the Attorney General to waive criminal, immoral, and certain health grounds of inadmissibility in the case of immigrants who are the spouses, children and parents of American citizens and permanent resident aliens;⁸⁷ one clarifying the Congressional intent of including illegitimate children in the definition of the term "child" and one according nonquota status to certain adopted children of American citizens.⁸⁸

By according nonquota status to certain immigrants, the measures described under (1) through (5) in fact exempted these immigrants from the numerical restrictions imposed by the national origins system.⁸⁹

(d) **Action by 86th Congress.** The 86th Congress passed three laws⁹⁰ in the immigration field generally following the pattern set by the 85th Congress. The more important provisions of these acts which are discussed in detail in the pertinent chapters of this volume are set forth below.⁹¹

(1) **Parole of refugees.** The parole into the United States before July 1, 1962 was authorized by the Act of July 14, 1960 for a controlled number of refugees who are under the mandate of the United Nations High Commissioner for Refugees. Their number must not exceed twenty-five per cent of the total

⁸⁶ See ch. 39.

⁸⁷ Public Law 85-316, Act of September 11, 1957 (71 Stat. 640 and 641). See ch. 34, § 3(a).

⁸⁸ Public Law 85-316, Act of September 11, 1957 (71 Stat. 639). See ch. 12.

⁸⁹ See ch. 2, §§ 2(d), 3.

⁹⁰ Public Law 86-253, Act of September 9, 1959 (73 Stat. 490); Public Law 86-363, Act of September 22, 1959 (73 Stat. 644); and Public Law 86-648, Act of July 14, 1960 (74 Stat. 504).

⁹¹ See also Auerbach, "Immigration Legislation, 1959," *Department of State Bulletin*, October 26, 1959, p. 600.

number of similar refugees resettled since July 1, 1959 in countries other than the United States, and includes 500 "difficult to resettle" cases. The act also permits refugees paroled into the United States to acquire permanent resident status after they have been in the United States for at least two years.⁹²

(2) **Nonquota status for backlogged preference cases.** The Act of September 22, 1959 accorded nonquota status to aliens who had registered on a quota waiting list before December 31, 1953, and for whom a petition according second, third or fourth preference quota status had been approved before January 1, 1959. Also, nonquota status was accorded to spouses and children of permanent resident aliens who had come to the United States under the Refugee Relief Act of 1953 if a petition for third preference quota status had been approved before January 1, 1959.⁹³

(3) **Further liberalization of adjustment-of-status procedure.** The change-of-status procedure for aliens applying for permanent immigrant status while in the United States, first broadened by the Act of August 21, 1958, was further liberalized under the terms of the Act of July 14, 1960 by removing the requirement that an applicant must have been admitted to the United States as a bona fide nonimmigrant and by extending its benefits to aliens paroled into the United States and those chargeable to oversubscribed quotas whose turn on the quota waiting list is reached while they are in the United States.⁹⁴

(4) **Extension of previous acts.** The emergency legislation for the benefit of earthquake victims of the Azores Islands and of Netherlands nationals displaced from Indonesia, discussed under (c)(4), was extended through June 30, 1962 and the number of nonquota visas authorized for these persons was significantly increased by the Act of July 14, 1960.⁹⁵ Legislation permitting the issuance of nonquota visas to an unlimited number of children adopted or to be adopted by American citizens was modified and extended through June 30, 1961.⁹⁶

(5) **Technical amendments.** The more important technical amendments to the Immigration and Nationality Act, passed by the 86th Congress, are those recasting the quota preference categories without increasing the sum total of quota numbers

⁹² See ch. 51.

⁹³ Act of September 22, 1959. See ch. 51.

⁹⁴ Act of July 14, 1960. See ch. 39.

⁹⁵ See ch. 51.

⁹⁶ Act of September 9, 1959 and Act of July 14, 1960. See ch. 51.

available under each quota;⁹⁷ specifying that a conviction of an alien for violating any law relating to the illicit possession of marihuana renders him inadmissible and deportable;⁹⁸ redefining the terms "son" and "daughter" as used in the immigration laws;⁹⁹ and limiting to two the number of children adopted by one family who may enjoy preferred treatment under the immigration laws.¹

§ 16. Administration stand on immigration policy since 1952.

(a) **Truman Commission.** After Congress passed the Immigration and Nationality Act over his veto, President Truman appointed in September 1952, a Commission on Immigration and Naturalization, "to study and evaluate the immigration and naturalization policies of the United States." This Commission, on January 1, 1953, submitted a 319-page report, highly critical of the new measure, urging that it "be reconsidered and revised from beginning to end."² Most of the criticism expressed by the Commission, as that of various nationality organizations and church groups, was directed against provisions which were already in effect under the old law, among these primarily the national origins quota system. No Congressional action was taken as a result of the report of this Commission.

(b) Eisenhower Messages to Congress.

(1) **State-of-the-Union Message, 1953.** President Eisenhower, in his State-of-the-Union Message of February 2, 1953, stressed that existing immigration legislation "contains injustices" and requested the Congress to review immigration legislation and "enact a statute which will at one and the same time guard our legitimate national interests and be faithful to our basic ideas of freedom and fairness to all."³ Implementing this statement the President, in a letter of April 6, 1953, to Senator Arthur V. Watkins of Utah, Chairman of the Joint Committee on Immigration Policies, proposed a Senate inquiry into the operations of the Immigration and Nationality Act and listed ten "administrative provisions of the law which, it is claimed, may operate with unwarranted harshness . . ." In his letter the President said in part: "While I recognize that

⁹⁷ Act of September 22, 1959. See ch. 11, § 1.

⁹⁸ Act of July 14, 1960. See chs. 33, 45.

⁹⁹ Act of September 22, 1959. See ch. 12.

¹ Act of September 22, 1959. See ch. 12.

² *Whom We Shall Welcome*, Report of the President's Commission on Immigration and Naturalization, Washington, 1953.

³ Congressional Record of February 2, 1953, p. 752.

the act contains some provisions which represent a liberalizing influence in the field of immigration law, and that a fundamental revision of a statute cannot be approached without searching analysis, I suggest that a study of the operation of many of the administrative provisions of the Immigration and Nationality Act of 1952 should be immediately undertaken, with an invitation to all concerned to testify regarding the provisions of which they complain."⁴

(2) **Message to 84th Congress, 1956.** President Eisenhower, in his message to Congress of February 8, 1956,⁵ recommended that Congress undertake a thorough study of the existing quota system and proposed the immediate adoption of certain changes in existing law pending the completion of such study. The message included a recommendation for the increase of the annual quota from 154,000 to some 220,000 by basing the quota computation on the 1950 census, rather than on the 1920 census as under existing law, and a formula for the redistribution of unused quotas on a regional basis to aliens entitled to preference quota status. The 84th Congress failed to take action on any of the recommendations contained in the President's message.

(3) **Message to 85th Congress, 1957.** The President renewed his request for a revision of the Immigration and Nationality Act in his message of January 31, 1957, to the 85th Congress,⁶ repeating substantially the recommendations contained in his 1956 message, but adding a recommendation for legislation authorizing the parole into the United States of refugees from Communist persecution and the adjustment, under certain safeguards, of the status of refugees paroled into the United States to that of permanent residents.

While the 85th Congress enacted a series of significant immigration measures, some of which were recommended by the President,⁷ such as the elimination of the mandatory fingerprinting requirement for nonimmigrants and the termination of deductions from future quotas under emergency legislation, it failed to act on the President's major recommendations for an increase in existing quotas and a study of the quota system.

⁴ Congressional Record of May 4, 1953, p. 4321.

⁵ Message from the President of the United States transmitting recommendations relative to our immigration and nationality laws, House of Representatives, Document No. 329, 84th Congress, Second Session. See also "Proposed Revision of Immigration and Nationality Act," statement by Secretary of State Dulles before the Subcommittee on Immigration of the Senate Judiciary Committee on April 24, 1956, Department of State Bulletin, May 7, 1956, p. 773.

⁶ Message from the President of the United States, relating to immigration matters House of Representatives, Document No. 85, 85th Congress, First Session.

⁷ See § 15(c), *supra*.

(4) **Message to 86th Congress, 1960.** In his message of March 17, 1960, to the 86th Congress the President urged again "the liberalization of some of our existing restrictions upon immigration." He stressed that "in the world of today our immigration law badly needs revision." While he asked that Congress seriously consider a new approach which would leave immigration policies subject to flexible standards, he urged that Congress immediately double existing immigration quotas and make refugee legislation part of our permanent immigration laws.⁸

⁸ Message from the President of the United States, relative to urging the liberalization of some of our existing restrictions upon immigration, House of Representatives, Document No. 360, 86th Congress, Second Session. See also Hanes, "Citizens by Choice," *Department of State Bulletin*, April 25, 1960, p. 660.

CHAPTER 2

THE AMERICAN IMMIGRATION SYSTEM—AN OUTLINE

SECTION.

1. Purpose.
2. Outline of basic procedures.
 - (a) Immigrants and nonimmigrants.
 - (b) Nonimmigrants.
 - (c) Quota and nonquota immigrants.
 - (d) National origins system.
 - (e) Quota chargeability.
 - (f) Preferences within quotas.
 - (g) Qualitative controls.
 - (h) Visa requirement.
 - (i) Significance of visa.
 - (j) "Double check."
 - (k) Admission and exclusion.
 - (l) Deportation.
 - (m) Acquiring permanent resident status in the United States—
Relief from deportation.
 - (n) Reentry permit.
 - (o) Determinations governed by law.
 - (p) Private legislation.
3. Checks and balances of American immigration policy.

§ 1. Purpose.—The basic procedures of American immigration law and its underlying policies are outlined in this chapter. While the primary purpose of this summary is to serve as a synopsis of the subject matter of this volume, it also should serve as an additional guide to the chapters of this book which deal in more detail with the various phases of the immigration laws and procedures.

§ 2. Outline of basic procedures.

(a) **Immigrants and nonimmigrants.** Every alien, i.e., a person not a citizen or national of the United States, who wishes to come to the United States has to comply with the provisions of the immigration laws. Lesser qualifications have to be met by those aliens who wish to come to the United States temporarily than by those who desire to immigrate. To offset attempts by immigrants to gain easier access into the United States in the guise of aliens seeking to enter temporarily, every alien is presumed to be an immigrant until he establishes that he is a non-immigrant. Depending on the alien's classification as an immigrant or nonimmigrant different rules of quantitative and qualitative controls apply. Nonimmigrants are not subject to quantitative restrictions. Of the more than thirty qualitative grounds barring an immigrant from the United States, several, including

illiteracy, do not apply to any nonimmigrants. Some qualitative bars do not apply to certain types of nonimmigrants, such as foreign government officials and international organization aliens. The qualitative grounds barring nonimmigrants, except the more serious security grounds, may, in consideration of the equities involved, be waived administratively. (Chapters 6, 33, 34)

(b) Nonimmigrants. The following classes of aliens are non-immigrants:

- (1) Officials of foreign governments (Chapter 18)
- (2) International organization officials and employees (Chapter 19)
- (3) NATO officials and employees (Chapter 20)
- (4) Visitors for business or pleasure (Chapter 21)
- (5) Students (Chapter 22)
- (6) Exchange visitors (Chapter 23)
- (7) Treaty traders and investors (Chapter 24)
- (8) Representatives of foreign information media (Chapter 25)
- (9) Temporary workers (Chapter 26)
- (10) Aliens in transit (Chapter 27)
- (11) Crewmen (Chapter 28)

(c) Quota and nonquota immigrants. Immigrants are subject to numerical, i.e., quota restrictions, unless they are classified nonquota immigrants as are the husbands, wives, and children of American citizens, natives of certain independent countries of the Western Hemisphere, ministers of religion, returning resident aliens, certain former employees of the United States Government, and former United States citizens who lost their citizenship for specified reasons. (Chapter 7)

(d) National origins system. The quota provisions of the law are based on the so-called national origins system which has as its objective to maintain in the ethnic composition of quota immigrants the balance which existed in the American population in 1920. Under this system the annual quota of each quota country, called "quota area," is $1/6$ of one per cent of the number of inhabitants in the continental United States, in 1920, attributable

by national origin to such quota area. The minimum quota of any quota area is 100. (Chapter 8)

(e) **Quota chargeability.** The quota to which an alien is chargeable, as a rule, is determined by his place of birth. Exceptions to the rule of quota chargeability apply, among others, to Asian persons who, if born outside the so-called Asia-Pacific Triangle, are chargeable to the quota of their ethnic origin, and to husbands, wives and children who may be charged to the more favorable quota of an accompanying spouse or parent. If, during a fiscal year, more immigrants apply for visas under a given quota than there are quota numbers available, the quota is considered oversubscribed. The applicant's name is then placed on a quota waiting list, and his case will not be considered until he reaches his turn in the same or a subsequent fiscal year. (Chapters 8, 9, 10, 14)

(f) **Preferences within quotas.** Certain immigrants are entitled to a preference within each quota. Skilled aliens, their spouses and unmarried children under twenty-one years of age have a first call on fifty per cent of each quota; parents and unmarried sons and daughters twenty-one years and over of American citizens on thirty per cent; and spouses, unmarried sons and daughters of permanent resident aliens on twenty per cent. Any portion of a quota not fully used by one preference group is first offered to the other preference groups and, if not used by them, becomes available to nonpreference quota immigrants, with a fifty per cent priority for brothers and sisters of American citizens and married sons and married daughters of American citizens. (Chapter 11)

(g) **Qualitative controls.** The major grounds disqualifying an alien from entering the United States can be subdivided into those applying to:

- (1) persons with certain mental or physical afflictions,
- (2) persons with criminal or immoral background,
- (3) persons who are likely to become public charges,
- (4) members and former members of proscribed organizations,
- (5) persons who are security risks for other reasons. (Chapter 33)

Some of the qualitative grounds disqualifying aliens from entering the United States may be waived in the individual case through the exercise of administrative discretion. (Chapter 34)

(h) **Visa requirement.** Immigrants and nonimmigrants, as a rule, have to obtain visas before applying for admission at a port of entry of the United States. Visas are issued by American consular officers stationed abroad at some 265 embassies, consulates general, and consulates of the United States. Before issuing a visa, the consular officer determines the alien's classification as an immigrant or nonimmigrant, and his qualification to receive a visa. In the case of the nonimmigrant this process includes a determination of the applicant's bona fides in coming to the United States which is of particular significance in countries with oversubscribed quotas, natives of which may attempt to enter as nonimmigrants to circumvent the numerical limitations applicable to immigrants. (Chapters 13, 15, 29)

(i) **Significance of visa.** A visa permits the alien to apply for admission to the United States at one of the designated ports of entry, but is no guarantee of admission. Application for admission as an immigrant, as a rule, may be made within four months of the date on which the visa was issued. A nonimmigrant may apply for admission during the period of time, and as often as, specified in his visa. Depending on reciprocity extended by the alien's country of nationality to American citizens, a nonimmigrant visa may be issued without fee and made valid for an unlimited number of applications for admission during a four-year period. (Chapters 15, 29, 31, 32, 37)

(j) **"Double check."** Applications for admission to the United States are made to officers of the Immigration and Naturalization Service who, before admitting the applicant, examine his classification and qualification under the same provisions of law governing this action by consular officers. Since consular officers act under the supervision of the Secretary of State and immigration officers under that of the Attorney General, this procedure is referred to as a "double check" procedure.¹ (Chapter 3)

(k) **Admission and exclusion.** An alien excluded from admission, as a rule, has certain rights of appeal. If admitted as an immigrant, the alien may remain in the United States as a permanent resident alien indefinitely. He is required to report his address once a year. A nonimmigrant is admitted for a specific period of time at the end of which he has to depart unless he obtains an extension of stay by application to the Immigration and Naturalization Service. He also has to report his address once a year. With certain exceptions, an alien admitted to the United States as a nonimmigrant may apply for a change of status from one nonimmigrant class to another and, in certain

¹ See Senate Report No. 1515, 81st Congress, Second Session, p. 327.

cases, to that of a permanent resident alien. (Chapters 4, 37, 39, 42, 43)

(l) **Deportation.** Any alien in the United States may become deportable for one of the grounds stated in law, either based on facts which would have rendered the alien ineligible to receive a visa or inadmissible to the United States had they been known before entry, or on facts which have developed since the alien came to the United States. The latter grounds include illegal entry, violation of the conditions of admission, or failure to maintain status in the case of a nonimmigrant, and criminal behavior. An alien held deportable by the Immigration and Naturalization Service has a right of appeal to administrative review bodies and to the courts. (Chapters 45, 46)

(m) **Acquiring permanent resident status in the United States—Relief from deportation.** An alien in the United States whose permanent resident status cannot be established may apply for registration as having been lawfully admitted if he entered the United States before June 28, 1940. Other aliens in the United States may acquire permanent resident status through the so-called change-of-status procedure if they meet certain qualifications. A deportable alien may, under certain circumstances, qualify for relief from deportation or for voluntary departure. (Chapters 39, 40, 46, 47)

(n) **Reentry permit.** The status of an alien in the United States terminates with his departure or, in the case of an immigrant, with his naturalization. An immigrant, i.e., an alien lawfully admitted for permanent residence, who wishes to leave the United States temporarily, may obtain a reentry permit which, during the period of its validity of up to two years, relieves him of the necessity of obtaining an immigrant visa. Like a visa, a reentry permit is no guarantee of admission and its holder may be excluded from the United States if found inadmissible at the time of his return. A permanent resident alien who departs from the United States temporarily without a reentry permit or whose reentry permit has expired, may apply to a consular officer for a nonquota immigrant visa as a returning resident alien. He also has to meet the qualitative requirements of the law. (Chapter 44)

(o) **Determinations governed by law.** An alien may be denied a visa, excluded from admission, or deported from the United States only for the specific reasons stated in law. While at the time of application for a visa and for admission to the United States the burden of proof is on the alien to show that he meets the requirements of the law, the burden of proof rests

with the government to show that an alien is deportable from the United States. (Chapters 36, 37, 46)

(p) **Private legislation.** An alien's mandatory inadmissibility into, or deportability from, the United States, in the absence of administrative relief, can be overcome only if Congress passes legislation making a specific provision of the law inapplicable to a particular alien. (Chapter 49)

§ 3. Checks and balances of American immigration policy.—American immigration policy, as it has developed since the Immigration Act of 1924, and more particularly since the enactment of the Immigration and Nationality Act in 1952, has been influenced by several basic objectives. These objectives which complement and balance each other and, therefore, must be seen in their interplay, are:

(1) Maintaining through the national origins system among quota immigrants the ethnic balance which existed in the American population in 1920;

(2) Permitting as an expression of the good neighbor policy a numerically unrestricted immigration from Western Hemisphere countries;

(3) Preserving the family unit and reuniting separated families;

(4) Meeting the needs for highly skilled aliens in the interest of the national economy, cultural objectives or welfare of the United States;

(5) Contributing through immigration to a solution of population problems created by emergencies, such as Communist aggression, political upheavals and natural disaster;

(6) Bettering the understanding between peoples by tourism across international borders and through educational exchange programs;

(7) Barring from the United States aliens who are likely to present problems of adjustment in view of their physical or mental health, criminal history, dependency, or whose admission would be otherwise detrimental to the security or welfare of the United States.

The following examples illustrate how these major objectives of American immigration policy serve as checks and balances between each other. The objective of the national origins system has always been modified by the good neighbor policy

which permits the entry of an unlimited number of qualified immigrants from Western Hemisphere countries and by the policy of exempting from quota restrictions close relatives of American citizens. The interplay of the national origins system on one hand, and the good neighbor policy and the policy of maintaining the family unit on the other hand is best illustrated by the fact that of 1,400,233 immigrants admitted from 1955 through 1959, 468,530 were quota immigrants and 931,703 were nonquota immigrants; of the latter group 488,565 were nonquota immigrants from Western Hemisphere countries and 166,705 were husbands, wives and children of American citizens. The tempering effect of the policy of maintaining the family unit on the objective of the national origins system is further illustrated by the fact that during the same five-year period, in addition to 3,810 Chinese persons and persons chargeable to the quotas of Japan and the Philippines who entered as quota immigrants or were permitted to acquire permanent resident status in the United States, 40,517 nonquota immigrants born in China, Japan and the Philippines entered as husbands, wives and children of American citizens.

The principle of preserving the family unit found expression also in making one-half of each quota available to close relatives of American citizens and permanent resident aliens not entitled to nonquota status. The policy of giving recognition to the needs of American cultural, economic and industrial interests expressed itself primarily in making half of each immigration quota available to aliens whose services are needed urgently in the United States. When Congress determined that existing quota limitations dwarfed its objectives of meeting through quota preferences the needs for highly skilled aliens and preserving the family unit, it enacted legislation which permitted immigrants within these categories to enter as nonquota immigrants if they had been waiting for immigrant visas within specified cut-off dates. This approach, which is illustrated by the Acts of September 11, 1957, August 31, 1958, and September 22, 1959,² further modifies the national origins system.

Refugee and other emergency legislation intended to alleviate population pressures created by Communist persecution, political upheavals and natural disasters created additional large non-quota immigrant groups and so represented additional deviations from the principle of the national origins system. The more significant acts were the Refugee Relief Act of 1953 under which 214,000 aliens came to the United States;³ the

² See ch. 1, § 14 (c) and (d).

³ See ch. 1, § 15(a)(1).

Act of September 11, 1957 which reinstated certain deductions from future quotas, thereby converting to nonquota immigrants a total of 308,790 aliens previously admitted as quota immigrants;⁴ and the Acts of July 25 and September 2, 1958, as amended, authorizing permanent residence for some 30,000 Hungarian refugees and the admission of 8,272 Netherlands refugees and Portuguese earthquake victims.⁵

The apparent conflict between the policy of reuniting separated families on one hand and barring from admission aliens who present problems of adjustment in view of their physical health or criminal history has led to legislation authorizing the admission of well-defined classes of close relatives of American citizens and permanent resident aliens irrespective of the fact that they suffer from tuberculosis, have been convicted of certain crimes or have a record of prostitution or of seeking to obtain or obtaining a visa by fraud or misrepresentation.⁶

The conflict between the efforts to better the understanding between peoples through educational exchange programs as reflected in the Educational Exchange Act of 1948, as amended,⁷ and the efforts of Congress to meet the needs of the United States for highly skilled aliens led to the enactment of the Act of June 4, 1956 which required former exchange visitors to make the skills and knowledge acquired in the United States available to their own countries before they may accept permanent or temporary employment in the United States.⁸

⁴ See ch. 1, § 15(a)(1) and ch. 8, § 4.

⁵ See ch. 1, § 15(c)(4) and (d)(4). See also Hanes, "Citizens by Choice," *Department of State Bulletin*, April 25, 1960, p. 660.

⁶ See ch. 1, § 15(c)(8), chs. 33 and 34.

⁷ See ch. 23.

⁸ See ch. 1, § 15(b)(1) and ch. 33, § 28.

CHAPTER 3

THE ADMINISTRATION OF THE IMMIGRATION LAWS

SECTION.

1. Summary.
2. The Immigration and Naturalization Service.
 - (a) History.
 - (b) Organization.
 - (c) Jurisdiction of immigration officers.
 - (d) Regulations and decisions.
 - (e) Fees.
3. The Secretary of State and consular officers.
 - (a) History.
 - (b) The visa function under the Immigration and Nationality Act.
4. The United States Public Health Service.
5. Other government agencies participating in the administration of the immigration laws.
 - (a) Secretary of Commerce.
 - (b) Secretary of Labor.
 - (c) Security agencies.
 - (d) Secretary of Health, Education, and Welfare.

§ 1. **Summary.**—Three agencies of the Government are primarily responsible for the administration of the immigration laws:

(1) The Department of State and its consular officers who, under the guidance of the Department, issue immigrant and nonimmigrant visas to aliens they find eligible to receive such visas;

(2) The Immigration and Naturalization Service of the Department of Justice which determines the admissibility of aliens arriving at a port of entry, excludes aliens found inadmissible at the time of entry and deports aliens who, after admission, become deportable for one of the reasons stated in law; and

(3) The United States Public Health Service of the Department of Health, Education and Welfare which determines whether aliens applying for visas and for admission into the United States meet the health requirements established by law.

Other government agencies, described in Section 5, cooperate with the Department of State and the Immigration and Naturalization Service in implementing specific provisions of the immigration laws.

§ 2. The Immigration and Naturalization Service.

(a) **History.** The first of the three agencies entrusted with the administration of the immigration laws was the Immigration and Naturalization Service. The Service had its beginning in the Act of March 3, 1891,¹ which created the office of Superintendent of Immigration in the Department of the Treasury. Earlier, the Act of August 3, 1882,² made the Secretary of the Treasury responsible for the administration of the immigration laws but the enforcement rested with state boards or officers designated by the Secretary of the Treasury. Before 1882 there was no federal agency charged with the supervision of immigration.

In 1895 the title of the Superintendent of Immigration was changed to Commissioner General of Immigration.³ In 1903 the Immigration Service was transferred from the Department of the Treasury to the Department of Commerce and Labor.⁴ By the Act of June 29, 1906,⁵ calling for federal supervision of naturalization, the Bureau of Immigration became the Bureau of Immigration and Naturalization. The Act of March 4, 1913,⁶ transferred this Bureau to the new Department of Labor and divided it into two Bureaus known as the Bureau of Immigration and the Bureau of Naturalization. The Bureau of Immigration was headed by a Commissioner General, the Bureau of Naturalization by a Commissioner. These Bureaus were placed under the immediate direction of the Secretary of Labor.

On June 10, 1933, the Bureaus of Immigration and Naturalization were consolidated as the Immigration and Naturalization Service of the Department of Labor under a Commissioner of Immigration and Naturalization. On May 20, 1940, the President submitted to Congress a reorganization plan whereby the Immigration and Naturalization Service, effective June 14, 1940,⁷ was transferred from the Department of Labor to the Department of Justice. Under this plan, which found Congressional approval, all functions and powers relating to immigration and nationality laws heretofore exercised by the Secretary of Labor were transferred to the Attorney General. Since that time the

¹ 26 Stat. 1084.

² 22 Stat. 214.

³ 28 Stat. 780.

⁴ 32 Stat. 826.

⁵ 34 Stat. 596.

⁶ 37 Stat. 736.

⁷ 54 Stat. 230.

Immigration and Naturalization Service has functioned as part of the Department of Justice.

(b) **Organization.** Under the direction of the Attorney General, the Commissioner of Immigration and Naturalization supervises the administration of the immigration laws by the Immigration and Naturalization Service. (Section 103) The headquarters of the Immigration and Naturalization Service, the so-called Central Office, is located in Washington, D. C.

Under the Commissioner, two Associate Commissioners, four Deputy Associate Commissioners, and eight Assistant Commissioners carry the major responsibility in the Central Office for the various operations of the Immigration and Naturalization Service. The General Counsel is responsible for the legal advisory, legislative, and litigation activities of the Service.

Under the executive direction of the Commissioner, four regional commissioners, and, under their general direction, district directors, are charged with the primary responsibility for the application of the immigration laws in individual cases. Suboffices, each under an officer in charge, are attached to the district offices. The location of each regional commissioner and of the various district offices located within each region are listed in Appendix E. Also listed are the several offices, including district offices, which the Immigration Service maintains in foreign countries.

(c) **Jurisdiction of immigration officers.** The specific jurisdiction of officers of the Immigration Service is discussed in connection with the substantive provisions of law. Generally speaking, the Service structure contemplates five levels of responsibility under the Central Office:

(1) Immigration officers who are responsible for the first line enforcement of the law,

(2) Special inquiry officers who conduct exclusion and deportation hearings,

(3) Officers in charge who supervise the inspection at ports of entry and the authorization of extension of non-immigrant admission periods and of voluntary departure before the commencement of deportation hearings,

(4) District Directors who grant or deny applications or petitions submitted to the Service and initiate proceedings required by law within their districts, and

(5) Regional Commissioners who exercise appellate jurisdiction within their regional areas not reserved to the Board of Immigration Appeals as described in Chapter 4.

District Directors stationed outside the United States operate under the direct supervision of the Central Office and officers in charge stationed outside the United States have the same powers with respect to the grant or denial of applications and petitions as have district directors in the United States, and their decisions may be appealed to district directors outside the United States. (8 CFR 103.1)

(d) **Regulations and decisions.** Regulations of the Immigration and Naturalization Service are published in Title 8 of the Code of Federal Regulations. The Immigration and Naturalization Service also publishes precedent decisions rendered by its Central Office, the Board of Immigration Appeals and the Attorney General. Seven volumes of decisions so far published under the title, *Administrative Decisions under Immigration and Nationality Laws*, and including decisions rendered from August 1940, through July 1958, can be purchased from the United States Government Printing Office. Interim decisions, i.e., precedent decisions prior to their inclusion in a bound volume, may be inspected at the offices of the Service listed in Appendix E and are also available by subscription from the Government Printing Office.

(e) **Fees.** Fees prescribed by statute and regulations for various services of the Immigration and Naturalization Service and for the filing of certain applications, motions, petitions and appeals under the immigration laws are discussed in connection with the pertinent substantive and procedural provisions. The regulatory prescription of fees by the Service, in addition to those prescribed by statute, is based on the authority contained in Title V of the Independent Offices Appropriations Act, 1952, which provides:

"It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency . . . to or for any person . . . except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation . . . to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided*, That nothing contained in this title shall repeal or modify existing statutes prohibit-

ing the collection, fixing the amount, or directing the disposition of any fee, charge or price"⁸

§ 3. The Secretary of State and consular officers.

(a) **History.** The Secretary of State and American consular officers stationed abroad assumed major responsibility in the administration of the immigration laws with the introduction of the visa requirement. This requirement was first administratively imposed when, on April 20, 1917, the Department of State instructed the Legation at The Hague that "all persons sailing for this country should be advised to have their passport visaed by a diplomatic or consular officer of the United States."⁹ This instruction was superseded by a Joint Order issued on July 26, 1917, by the Department of State and the Department of Labor providing that "each passport of an alien intending to enter the United States should be 'visaed' by an American Consulate, or the Diplomatic Mission if specially authorized" and that passports of enemy aliens should not be visaed unless previously authorized.¹⁰ This order, issued as a war-time measure, was given legislative sanction by the Act of May 22, 1918¹¹ regarding the control of persons coming to, and departing from, the United States during the World War. Under the authority of this act the President issued a proclamation on August 8, 1918, designating the Secretary of State as the official in charge of the granting of permission to aliens to enter the United States.¹² An executive order of the same date prohibited the issuance of a visa unless it appeared that "there is reasonable necessity for entering the United States" and that such entry was "not prejudicial to the interests of the United States."¹³

In order to supervise the issuance of visas by consular officers a Visa Section was established in the Bureau of Citizenship of the Department of State. On August 13, 1918, this section was set up as the Visa Office in the Division of Passport Control. Since December 1, 1919, the Visa Office has been operated as a separate unit within the Department of State. Its name was changed by Departmental Order on January 1, 1939, to Visa Division and it retained this name until the Im-

⁸ 65 Stat. 290; see also § 405(d) and 8 CFR 2.5.

⁹ Hackworth, *Digest of International Law*, Vol. III, p. 741.

¹⁰ *Laws Applicable To Immigration And Nationality*, Washington, 1953, p. 1042.

¹¹ 40 Stat. 559.

¹² Proclamation No. 1473, *Laws Applicable To Immigration And Nationality*, *supra*, p. 1049.

¹³ Executive Order No. 2932 of August 8, 1918, § 32.

migration and Nationality Act reinstated the earlier name of Visa Office.

When the Act of May 19, 1921, the First Quota Act,¹⁴ imposed numerical limitations on the number of immigrants by providing annual quotas, consular officers ceased to issue visas only when notified that the quotas had been exhausted. They could refuse visas only upon such a notification or if they found that the entry of an individual alien was prohibited under the war-time measure based on the proclamation of August 8, 1918. The determination whether aliens met the qualitative standards established by the Immigration Act of 1917 was made at ports of entry by the Bureau of Immigration, then part of the Department of Labor. This led to considerable hardship through the exclusion of many aliens upon arrival at ports of entry.¹⁵ The Immigration Act of 1924 introduced the double check system whereby American consular officers were permitted to issue a visa to an immigrant only if he met the same qualitative standards which he had to meet at the time of his application for admission at a port of entry before an immigration officer.¹⁶

The Alien Registration Act of 1940 extended the visa requirement to all aliens seeking to enter the United States, including nonimmigrants.¹⁷

(b) The visa function under the Immigration and Nationality Act. The Immigration and Nationality Act vests the Secretary of State with the responsibility for the administration and enforcement of the immigration laws relating to the powers, duties, and functions of diplomatic and consular officers. The issuance and refusal of visas is the responsibility of American consular officers stationed at consular offices abroad. (Section 104(a)) At larger posts consular officers are assigned to visa work on a full-time basis. At other posts visa work is performed by consular officers in addition to their other duties. They are assisted in their visa work by American and alien clerks.¹⁸

Within the Department of State, the Administrator of the Bureau of Security and Consular Affairs, with the rank of an Assistant Secretary, is charged with the responsibilities of the Secretary of State for the administration of the immigration

¹⁴ See ch. 1, § 11.

¹⁵ Hackworth, *supra*, pp. 741, 742.

¹⁶ See ch. 1, § 12.

¹⁷ Act of June 28, 1940, § 30, 54 Stat. 673.

¹⁸ See Appendix D for list of diplomatic and consular offices issuing visas.

laws. The Administrator issues visa regulations and, through the Visa Office, supervises the administration of the immigration laws by consular officers abroad. The Visa Office, headed by a director, issues general instructions to consular officers, controls the issuance of quota numbers to consular officers and assists them in individual visa cases by rendering advisory opinions. (Section 104(b) and (c))

While final responsibility for the issuance and denial of visas rests with the consular officer, he is bound by the regulations and legal rulings of the Department of State.¹⁹

The Visa Office entertains inquiries by attorneys and other interested persons in the United States concerning the disposition of visa cases. If there is no case record in the Department of State on the case in which an inquiry is received, a request for a report on the case will be directed to the respective consular office. If, on the basis of the facts available in the Department of State or upon the report received from the consular office, it is found that the handling of the case by the consular officer was not consistent with the Department's interpretation of law and regulations, an appropriate advisory opinion is dispatched to the consular officer having jurisdiction in the case.²⁰

The Commissioner of Immigration and Naturalization and the Administrator of the State Department's Bureau of Security and Consular Affairs are directed to maintain direct and continuous liaison with each other with a view to a coordinated, uniform and efficient administration of the immigration laws. (Section 105) If a conflict arises concerning a question of law, the determination and ruling by the Attorney General is controlling.²¹ (Section 103 (a))

Regulations of the Department of State affecting aliens are contained in Title 22 of the Code of Federal Regulations as follows: Part 41, Nonimmigrant Visa Regulations; Part 42, Immigrant Visa Regulations; Part 44, Documentation of Immigrants under Section 15 of the Act of September 11, 1957; and Part 46, Control of Aliens Departing from the United States.

The *Visa Office Bulletin*, published by the Department of State as occasions arise, contains precedent-making interpretations of

¹⁹ For a discussion of the respective responsibilities of consular officers and the Department of State, and of the review of visa refusals, see ch. 36.

²⁰ See ch. 36.

²¹ For example, see 41 Op. Atty. Gen. No. 77, 1959.

the law, quota and other information relating to the visa function. It is available to the public at request without charge.

§ 4. The United States Public Health Service.—Physicians of the agency which later became the United States Public Health Service have been medical advisors for the immigration agencies since 1891.²² Before 1925, all medical examinations were made in the United States. In 1925 plans were made to provide medical examinations of aliens in their countries of origin. The United States Public Health Service, since that time, has had doctors at major visa-issuing consulates in various European countries, Canada, Cuba, Mexico and Hong Kong.

The responsibility of the Public Health Service for the physical and mental examination of aliens is defined in Section 325 of the Public Health Service Act of July 1, 1944:

"The Surgeon General shall provide for making, at places within the United States or in other countries, such physical and mental examinations of aliens as are required by the immigration laws, subject to administrative regulations prescribed by the Attorney General and medical regulations prescribed by the Surgeon General with the approval of the Administrator."²³

The Public Health Service, which is part of the Department of Health, Education and Welfare, publishes its regulations concerning the medical examination of aliens in Part 34 of Title 42 of the Code of Federal Regulations.

§ 5. Other government agencies participating in the administration of the immigration laws.—While the Department of State, the Immigration and Naturalization Service and the United States Public Health Service carry the major responsibility for the administration of the immigration laws, other agencies of the government participate in the implementation of specified provisions of the law.

(a) **Secretary of Commerce.** The Secretary of Commerce, jointly with the Secretary of State and the Attorney General, is responsible for the determination of the annual quotas. (Section 201(b))²⁴

(b) **Secretary of Labor.** The Secretary of Labor is responsible for the certification to the Secretary of State and the Attorney General of his determination that there is an oversupply of labor in the United States or that the immigration of certain aliens would adversely affect the wages and working conditions of workers in the United States similarly em-

²² 26 Stat. 1084.

²³ 58 Stat. 697.

²⁴ See ch. 8, § 2(b).

ployed. (Section 212(a)(14))²⁵ The Secretary of Labor also shares the responsibility with the Attorney General for the temporary importation of agricultural workers from Mexico.²⁶

(c) **Security agencies.** The Immigration and Naturalization Service and the Department of State have authority to maintain liaison with the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining information for the use in enforcing the provisions of the immigration laws. (Section 105) The Director of the Central Intelligence Agency, jointly with the Attorney General and the Commissioner of Immigration and Naturalization, controls the permanent admission of a limited number of aliens in the interest of national security or the furtherance of the national intelligence mission.²⁷

(d) **Secretary of Health, Education, and Welfare.** If requested by the Attorney General, the Secretary of Health, Education and Welfare²⁸ is required to provide information about the issuance of social security cards to aliens and about the identity and location of aliens in the United States. (Section 290(c))

²⁵ See ch. 33, § 11.

²⁶ See ch. 52.

²⁷ See ch. 1, § 13(j).

²⁸ On April 11, 1953, the Secretary of Health, Education, and Welfare assumed responsibility for the functions previously carried out by the Federal Security Administrator to whom reference is made in § 290(c).

CHAPTER 4

THE BOARD OF IMMIGRATION APPEALS

SECTION.

1. Summary.
2. History of the Board.
3. The Board's organization and jurisdiction.
4. Scope of review.
5. Stay of execution.
6. Oral argument.
7. Fees.
8. Finality of Board decisions—Referral to Attorney General.
9. Motions to the Board for reconsideration or reopening of case.

§ 1. Summary.—The Board of Immigration Appeals, a non-statutory body created by immigration regulations, is a quasi-judicial appellate tribunal responsible only to the Attorney General. It reviews certain decisions of the Immigration and Naturalization Service. Its decisions are binding on the Service and serve as precedents in all proceedings involving the same issue.

§ 2. History of the Board.—After the administration of the immigration and naturalization laws was transferred, in 1913, to the newly created Department of Labor, an Advisory Committee aided the Secretary of Labor in performing his quasi-judicial duties in the enforcement of these laws. At that time, decisions in immigration cases consisted of a memorandum prepared by a subordinate employee of the Bureau of Immigration, signed by the Commissioner General of Immigration and the Secretary of Labor. The Advisory Committee was developed in 1921 and its successor, the Board of Review, was organized as a result of a study made by the Secretary of Labor's Committee on Administrative Procedure in the late thirties. The Board of Review was relieved of considerable administrative work and was made a genuine quasi-judicial body by making it responsible directly to the Secretary of Labor who, under the statute, had the power of determination.

When the Immigration and Naturalization Service was transferred to the Department of Justice in 1940, the Board of Immigration Appeals was established in the Department of Justice under the direct supervision of the Attorney General.

As originally established, the Board of Immigration Appeals was given the responsibility and power to make final decisions. It became completely independent of the Immigration and Natur-

alization Service. It was, and still is, solely responsible to the Attorney General.

From August 1, 1945 until July 28, 1947 the jurisdiction of the Board of Immigration Appeals, generally speaking, was limited to the review of decisions of the Commissioner of Immigration and Naturalization which were unfavorable to the alien. In addition, it reviewed all fine cases, not involving questions of mitigation, in which the aggrieved party filed notice of appeal. The Service, during that period, became in effect the prosecutor and the court of first instance.

Since July 28, 1947 the jurisdiction of the Board of Immigration Appeals has become appellate in character. Since that date the Board has no jurisdiction automatically to review adverse decisions of the Immigration and Naturalization Service, but it obtains jurisdiction only through appeal by the aggrieved party or through certification.

§ 3. The Board's organization and jurisdiction.—The Board consists of a chairman and four other members. An executive assistant-chief examiner acts as an alternate member.

The Board acquires jurisdiction in immigration matters either by an appeal of the aggrieved party from a decision of the Immigration and Naturalization Service or by certification to the Board of a decision at the request of the Service or the Board itself. (8 CFR 3.1(b) and (c))

The appellate jurisdiction of the Board is defined by regulations and does not extend beyond this definition. Appeal lies to the Board from:

- (1) decisions of special inquiry officers in exclusion cases,
- (2) decisions of special inquiry officers in deportation cases,
- (3) decisions on applications for the advance exercise of discretionary authority permitting the Attorney General to admit certain otherwise inadmissible returning resident aliens,
- (4) decisions involving administrative fines and penalties,
- (5) decisions in connection with visa petitions for the classification as nonquota or preference quota immigrants of certain alien relatives of American citizens and of permanent resident aliens,
- (6) decisions on application for the advance exercise of the discretionary authority permitting the Attorney General

to admit temporarily certain otherwise inadmissible nonimmigrant aliens, and

(7) determinations relating to bond, parole or detention of an alien pending the determination of his deportability. (8 CFR 3.1(b))

§ 4. Scope of review.—In determining cases the Board may, within the jurisdiction conferred on it by regulations, as described in Section 3, exercise the discretion and authority vested by law in the Attorney General as is appropriate and necessary for the disposition of the case, except that the Board has no authority to consider or determine the manner, at whose expense, or to which country an alien will be deported.¹ (8 CFR 3.1(d))

Unlike the appellate courts the Board, on questions of fact, is not limited to a determination if there was substantial evidence upon which the finding of the special inquiry officer was based. The Board has the power and authority to review the record and make its own conclusions as to facts. If the case presents an issue as to the credibility of witnesses, due consideration is given to the conclusions reached by the special inquiry officer who had the witness before him, but the Board is in no sense bound by the findings of the Service even if supported by competent and substantial evidence. Thus, the Board may make a *de novo* review of the record and arrive at its conclusions irrespective of those reached by the special inquiry officer.

The same rule applies when a case presents an issue of discretionary action. The Board is also at liberty, if it feels that the proper disposition of a case so requires, to grant discretionary relief not specifically sought by the respondent in the proceeding before the Service. In practice, however, this is an exception rather than the rule, and normally if relief other than that sought before the Service is requested on appeal, the Board will limit its consideration to the issue of whether the case should be remanded to the Service for the purpose of receiving such an application and developing the record on the

¹ The Board's delegated authority is as broad as the Attorney General's only in the areas which are under its jurisdiction as specified in regulations. Consequently, the Board may not exercise the discretionary authority of the Attorney General contained in §§ 5 and 7 of the Act of September 11, 1957 (see ch. 34, § 3), since decisions involving this authority are not listed among those to which the Board's jurisdiction extends. (Attorney General, *In the Matter of DeG., et al.*, Interim Decision 1936, December 14, 1959). Consequently, the Board has no authority to review denial by the Service of application for adjustment of status under § 245. (BIA, *In the Matter of M.*, Interim Decision 1090, August 5, 1960)

basis of such a request. The powers of the Board on matters within its jurisdiction are broad and plenary.²

A determination of the constitutionality of statutes enacted by Congress is not a matter within the province of the Board of Immigration Appeals. The Board holds that it is within the power and capacity only of the United States courts to pass on the constitutionality of statutes and therefore it accepts the legislative mandates of the statutes it administers.³

§ 5. Stay of execution.—A decision by the Service which may be appealed to the Board is not executed during the time allowed for the filing of an appeal nor while a case is before the Board on appeal or on certification. (8 CFR 3.6)

§ 6. Oral argument.—Oral argument is heard by the Board at its offices in Washington, D. C., on request only. The Service, as a rule, is represented in argument before the Board. The Board convenes for the purpose of hearing oral argument every day, except Saturdays, Sundays and legal holidays. (8 CFR 3.1(e)) If oral argument is not requested, the Board makes its decisions on the record.

§ 7. Fees.—A notice of appeal which is to be submitted on Form I-290A, or a motion filed with the Board must be accompanied by a fee as required by regulations. Exempt from this requirement are appeals and motions filed by an officer of the Service. Also, an alien or other person who is unable to pay the fee may file with the motion or appeal an affidavit stating his belief that he is entitled to redress, and his inability to pay the required fee. The Board may, in its discretion, authorize the prosecution of any appeal or motion without prepayment of fee. (8 CFR 3.3(b))

§ 8. Finality of Board decisions—Referral to Attorney General.—Decisions of the Board are final unless they are referred for review to the Attorney General. The Board may return a case to the Service for appropriate further action without entering a final decision on the merits of the case. (8 CFR 3.1(d)(2))

A decision of the Board is referred to the Attorney General if:

- (1) the Attorney General directs the Board to refer it to him;

² See Finucane, "Procedure before the Board of Immigration Appeals," *Interpreter Releases* of January 22, 1954, p. 30. The Board's authority to determine factual issues was specifically confirmed by the Attorney General, *In the Matter of B.*, 7, I. & N. Dec. 1, June 6, 1956. See also Finucane, "Administrative and Court Review of Exclusion and Petition Cases," *Interpreter Releases* of June 6, 1960, p. 165.

³ BIA, *in the Matter of O.*, 3, I. & N. Dec. 736, September 13, 1949; BIA, *In the Matter of L.*, 4, I. & N. Dec. 556, November 21, 1951.

(2) the chairman or a majority of the Board believes it should be referred to the Attorney General for review; or

(3) the Commissioner requests the referral to the Attorney General for review. (8 CFR 3.1(h))

While the regulation provides that at the request of the Commissioner the Board must refer a case to the Attorney General for review of its decision, it does not authorize or require the Board to certify specific questions of law to the Attorney General.⁴

In the light of the regulations providing for a referral for review of the Board's decision to the Attorney General, the Supreme Court has held that the Attorney General denies himself the right to sidestep the Board or dictate its decision in any manner. Therefore, the Board is required to exercise its own judgment when considering appeals. "The clear import of broad provisions for a final review by the Attorney General himself would be meaningless if the Board were not expected to render a decision in accord with its own collective belief."⁵

§ 9. Motions to the Board for reconsideration or reopening of case.—Once a decision has been made by the Board, a case may be reconsidered or reopened only upon written motion. (8 CFR 3.2) In a deportation proceeding such a motion may not be considered subsequent to the alien's departure from the United States.

A motion to reconsider a decision of the Board must state the reasons for reconsideration and be supported by such precedent decisions as are applicable. Motions in general terms merely requesting reconsideration without the support of authority are uniformly denied. A motion to reopen must state the new facts to be proved and must be supported by affidavits or other evidentiary material.

The motion by the affected party, while addressed to the Board, is physically filed with the immigration office where the case is pending, since records in immigration matters are decentralized and are to be found in these offices. When the motion is filed it is attached to the record and forwarded to the Board.

The filing of a motion does not automatically stay the execution of the order of exclusion or deportation. It is, however,

⁴ BIA, *In the Matter of G.M.*, 7, I. & N. Dec. 40, 60, December 19, 1955.

⁵ U.S. ex rel. *Accardi v. Shaughnessy* (1954), 347 U. S. 260, 98 L. ed. 681, 74 Sup. Ct. 499.

discretionary with the field office upon receipt of a motion to stay deportation. If the field office elects not to do so, upon receipt of the record, the Board may stay deportation pending its consideration of the matter. The Board does not consider the question of staying deportation unless the alien's representative informs the Board that deportation is imminent and requests a stay of deportation.

If oral argument on the motion is desired, the motion or letter transmitting the motion must so request.

Motions may also be filed by the Commissioner or any other authorized officer of the Service seeking a reconsideration of the Board's decision or a reopening of the case. A copy of the motion must be served on the alien or other party affected. A ten-day period is allowed within which to submit a brief in reply to the Commissioner's motion which is filed at the field office. This period may be extended by the Board. (8 CFR 3.8)

CHAPTER 5

APPLICATION AND ORGANIZATION OF IMMIGRATION LAWS—DEFINITIONS

SECTION.

1. Application of immigration laws.
2. Organization of immigration laws.
3. Definitions.
 - (a) "Entry."
 - (b) "Residence."
 - (c) "Passport."
 - (d) "Good moral character."
 - (e) "Spouse," "wife," and "husband."
 - (1) General rule.
 - (2) Marriage to facilitate immigration.
 - (3) Consummation prior to marriage not pertinent.
 - (4) Divorce in absentia.
 - (5) Foreign religious marriage.
 - (6) Uncle and niece marriage.
 - (7) Effect of annulment.
 - (8) Japanese marriage.
 - (f) "Parent," "father," and "mother."

§ 1. Application of immigration laws.—The immigration laws of the United States apply to aliens who seek to enter from a foreign port or place or from an outlying possession and to those who are in the United States. An "alien" is any person who is not a citizen or national of the United States. The term "United States" means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States. Thus, an alien who seeks to enter the continental United States or any of the other areas included in the term "United States" must fulfill the requirements of the immigration laws whether he comes from a foreign country, from one of the outlying possessions of the United States, i.e., American Samoa or Swains Island or from other areas under American administration. (Section 101(a) (3), (13), (29), and (38))

The rules applicable to aliens coming directly from one of the American territories or possessions to the United States or traveling between the United States and these possessions or territories are discussed in Chapter 35.

§ 2. Organization of immigration laws.—The Immigration and Nationality Act, the principal statute governing immigration to, and deportation from, the United States, is subdivided into four titles. Title I deals with the definition of terms used in

the act and with the agencies entrusted with its administration; Title II deals with immigration; Title III with nationality and naturalization; and Title IV with miscellaneous provisions, among them those setting up a Congressional Committee on Immigration and Nationality Policies and those relating to the repeal and amendment of other laws, a savings clause, and the effective date of the act.

On December 24, 1952, the effective date of the Immigration and Nationality Act, forty-eight laws and parts of laws in the immigration and nationality field were specifically repealed. In addition, the act provides that all other laws or parts of laws in conflict or inconsistent with the act are, to the extent of such conflict or inconsistency, repealed. (Section 405)

As of that date, practically all American immigration laws were codified in the act.¹ Immigration legislation enacted since 1952 has, in part, amended the Immigration and Nationality Act and, in part, created separate statutes. While Congress followed the latter course consistently in enacting temporary immigration legislation such as the Refugee Relief Act of 1953, it followed the same course in several instances in the case of enactments which substantively modified permanent provisions of the Immigration and Nationality Act. Examples for this approach are Section 4 of the Act of September 3, 1954,² the so-called Shepherders Act which, without referring to it, modified Section 212(a)(9) of the Immigration and Nationality Act,³ and Sections 5 and 7 of the Act of September 11, 1957,⁴ which vested the Attorney General with discretionary authority to admit otherwise inadmissible immigrants without making these provisions part of the Immigration and Nationality Act.⁵

§ 3. Definitions.—Some fifty terms are defined in the Immigration and Nationality Act. Additional definitions are contained in the visa regulations of the Department of State and in the regulations of the Immigration and Naturalization Service. (22 CFR 41.1 and 42.1; 8 CFR 1.1) Some of these definitions are in fact substantive provisions of law such as the listing of classes of nonquota immigrants and of nonimmigrants. These definitions and others which are substantive in character are discussed in the appropriate chapters. The more im-

¹ Exceptions are § 3 of the Act of December 28, 1945 (59 Stat. 659), discussed in ch. 33, § 2, and portions of § 10 of the Displaced Persons Act of 1948 (62 Stat. 1009), as discussed in ch. 33, § 16(g).

² 68 Stat. 1145.

³ See ch. 33, § 5(i).

⁴ 71 Stat. 640.

⁵ See ch. 34, § 3.

portant definitions not so covered, as far as they relate to immigration and deportation, are discussed below.

(a) **"Entry."** The term "entry" means any coming of an alien into the United States from a foreign port or place or from an outlying possession whether voluntary or otherwise. However, an alien having a lawful permanent residence in the United States is not regarded as making an entry for the purposes of the immigration laws if he proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him, or his presence in a foreign port or place or in an outlying possession was not voluntary. No person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process is held to be entitled to this exception. (Section 101(a)(13))⁶

(b) **"Residence."** The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. (Section 101(a)(33)) This definition is a codification of judicial constructions of the term "residence" as expressed by the Supreme Court in *Savorgnan v. U. S.*⁷ In that case the Court stated:

"Under the act of 1940, the issue is not what her intent was on leaving the United States, nor whether, at any later time, it was her intent to have a permanent residence abroad or to have a residence in the United States. The issue is only whether she did, at any time between July, 1941, and November, 1945, in fact 'reside' abroad. The test of such 'residence' is whether, at any time during that period, she did, in fact, have a 'principal dwelling place' or 'place of general abode' abroad. She testified that, from 1941 to 1945, she lived with her husband and his family in Rome, except for six months' internment in Salzburg, Germany. Whatever may have been her reasons, wishes, or intent, her principal dwelling place was in fact with her husband in Rome where he was serving in his Foreign Ministry. Her intent as to her 'domicile' or as to her 'permanent residence,' as distinguished from her actual 'residence,' 'principal dwelling place,' and 'place of abode,' is not material."⁸

⁶ See also Senate Report No. 1137, 82nd Congress, Second Session, p. 4, and House Report No. 1365, 82nd Congress, Second Session, p. 32.

Filipino resident of the Howoii Islands who signed a contract for employment outside the Islands and who thereupon was sent to Kwajalein, Marshall Islands, although he may not have specifically known the destination to which he would be sent and may not have been aware that Kwajalein was a foreign place for immigration purposes, made an "entry" within the meaning of the immigration laws upon his return to Howoii from Kwajalein in November 1951. (BIA, *In the Matter of A.*, 7, I. & N. Dec. 128, February 20, 1956)

⁷ (1950), 338 U. S. 491, 505, 94 L. ed. 287, 70 Sup. Ct. 292.

⁸ For a different construction of the term "residence" see ch. 9, § 1(d).

(c) **"Passport."** The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality, if any, which is valid for the entry of the bearer into a foreign country. (Section 101(a)(30))⁹

The statutory definition of the term "passport" has been implemented by regulations. A "passport," as defined in the Act, is not considered limited to a national passport, or to a single document. It may consist of two or more documents which, when considered together, fulfill the requirements of the statutory definition. It is specified, however, that permission to enter a foreign country must be issued by a competent authority and must be clearly valid for this purpose. (22 CFR 41.1 and 42.1)

A nonimmigrant unable to obtain a document issued by a competent authority which indicates his origin, identity and nationality may furnish the missing information to the best of his knowledge and belief, by presenting an affidavit which, when combined with the documentary evidence of admissibility into a foreign country is considered sufficient to meet the statutory requirement of the definition of the term "passport." (22 CFR 41.1)¹⁰

(d) **"Good moral character."** Certain benefits under the immigration laws and discretionary relief from some of its provisions may be accorded an alien only if he establishes that he is a person of "good moral character." For example, the establishment of a record of lawful admission,¹¹ suspension of deportation,¹² and voluntary departure¹³ are procedures available only to aliens who are persons of "good moral character."¹⁴ Also, the petition by an American citizen and spouse to classify an

⁹ Where a foreign consul in the United States issued a passport to a national which correctly set forth his origin, identity, and nationality, it was regarded as valid notwithstanding an instruction by the Government concerned to the consul not to issue passports in this type of case. (BIA, *In the Matter of B.A., H.L., and B.H.*, 6, I. & N. Dec. 584, May 11, 1955)

¹⁰ See also Department of State ruling of July 17, 1957, Visa Office Bulletin No. 24 of August 23, 1957.

¹¹ See ch. 40.

¹² See ch. 47.

¹³ See ch. 46.

¹⁴ The standards set for a person of good moral character must be clearly differentiated from the statutory definition of a person who has been convicted of, or admits the commission of, a crime involving moral turpitude as described in ch. 33, § 5. An alien who is unable to establish that he is a person of good moral character is not necessarily one who was convicted of, or has admitted the commission of a crime involving moral turpitude and therefore may be found admissible into the United States although he is not a person of good moral character, since such a finding is not a prerequisite of an alien's eligibility to receive a visa and his admissibility into the United States.

alien as an eligible orphan may not be approved unless the petitioners are found to be persons of "good moral character."¹⁵

The statute specifies that an alien may not be regarded a person of "good moral character" who, during the period for which "good moral character" is required, is, or was:

- (1) a habitual drunkard;
- (2) one who, during such period, has committed adultery;¹⁶
- (3) a polygamist, prostitute, smuggler of aliens, a narcotic drug peddler, or a person who, under the provisions of law, would be excludable as a criminal;¹⁷

¹⁵ See ch. 52. When "good moral character" is required administratively as a prerequisite to discretionary action, as in the case of an alien who applies for a waiver of inadmissibility as a returning resident alien (ch. 34, § 2) or for change of status (ch. 39, § 2) the statutory definition of good moral character is taken into consideration by the Immigration and Naturalization Service but is not binding in its determination. (BIA, *In the Matter of N.*, 7, I. & N. Dec. 368, December 10, 1956, and Assistant Commissioner, *In the Matter of F.*, Interim Decision 940, July 7, 1958)

¹⁶ The criteria for determining whether adultery has been committed in the criminal sense are not necessarily applicable in determining whether adultery has been committed within the meaning of § 101(f)(2). (BIA, *In the Matter of W.Y.S.*, 6, I. & N. Dec. 801, December 5, 1955)

Where an alien is single and the other party to sexual intercourse is married, there may be a question in some cases whether the alien's conduct constitutes adultery. However, where the alien himself is married and has sexual relations with a woman not his wife, adultery has been committed in accordance with the common understanding of the word. (BIA, *In the Matter of N.*, 7, I. & N. Dec. 96, January 18, 1956)

Under the law of Texas, sexual intercourse between a man and a woman when either is lawfully married to some other person constitutes adultery. The subsequent marriage of the parties involved does not remove the statutory bar. (BIA, *In the Matter of R.L.*, 7, I. & N. Dec. 175, April 20, 1956)

An alien who had sexual intercourse with a man whom she had ceremoniously married, being ignorant of the fact that this man was already married to a third person is not precluded from establishing good moral character and is eligible for voluntary departure, since in the State where committed absence of any intent to commit a crime would be a defense to an adultery prosecution. (BIA, *In the Matter of R.L.*, 6, I. & N. Dec. 463, December 21, 1954)

Good moral character is established notwithstanding respondent's cohabitation with a married woman where the evidence shows that respondent did not know of the existence of the marriage; the relationship was faithful, stable and long continuing; and respondent entered into marriage with the woman as soon as they were free to do so. (BIA, *In the Matter of M.A.*, 7, I. & N. Dec. 365, December 7, 1956)

Section 101(f)(2) does not preclude a finding of good moral character where alien enters into a second marriage in good faith and in the honest belief that her first marriage had been lawfully dissolved when, in fact, it was not terminated until six years later. (BIA, *In the Matter of U.*, 7, I. & N. Dec. 380, December 20, 1956)

¹⁷ While the expungement of a conviction record in California does not fully erase a finding of guilt for the particular crime, the offense may not then serve as a bar to the establishment of good moral character. (Attorney General, *In the Matter of H.*, 6, I. & N. Dec. 619, October 18, 1955) An alien is not precluded from establishing good moral character by the provisions of § 101(f)(3) if convicted within the statutory period during which good moral character is required of an offense which comes within the purview of § 4 of the Act of September 3, 1954. (BIA, *In the Matter of M.*, 7, I. & N. Dec. 147, March 16, 1956) See ch. 33, § 5(i).

(4) one whose income is derived principally from illegal gambling activities;¹⁸

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under the Immigration and Nationality Act;¹⁹

(7) one who, during such period, has been confined, as a result of conviction, to a penal institution for 180 days or more;²⁰

(8) one who, at any time, has been convicted of the crime of murder.

It is specifically provided that a person may be held not to be of "good moral character" for reasons other than those enumerated above.²¹ (Section 101(f))

¹⁸ Alien who received salary for six months as dealer or operator of gaming table is held to have derived income from gambling activities within meaning of § 101(f)(4) and by reason of such employment within statutory period to be barred from establishing good moral character. (BIA, *In the Matter of S.K.C.*, Interim Decision 963, November 14, 1958)

¹⁹ An alien who falsely claimed United States citizenship in a visa petition to confer nonquota status on his spouse is precluded from establishing good moral character by reasons of § 101(f)(6). (BIA, *In the Matter of W.J.W.*, 7, I. & N. Dec. 706, April 15, 1958)

False information given under oath in a question-and-answer statement before an officer of the Immigration Service in connection with an application for a certificate of citizenship in lieu of one lost is "testimony" within the meaning of § 101(f)(6) of the 1952 Act. (BIA, *In the Matter of G.L.T.*, Interim Decision 1012, July 1, 1959)

False statements in application for United States passport (whether or not under oath) do not constitute false "testimony" within meaning of § 101(f)(6) of 1952 Act. "Testimony" is construed as referring solely to oral utterances or oral evidence. (BIA, *In the Matter of L.D.E.*, Interim Decision 1011, June 29, 1959) This decision overrules an earlier decision of the Board of Immigration Appeals (5, I. & N. Dec. 514, November 12, 1953) in which the Board held that an alien who falsely alleges in his application for extension of temporary stay that he is not gainfully employed has given false testimony and therefore is precluded from establishing good moral character.

²⁰ A pardon which eliminates the crime as a basis for deportation proceedings should immunize the alien from the statutory bar to the establishment of good moral character because of confinement for that very crime. Hence, an alien who was granted a pardon in 1954 for her conviction of larceny resulting in confinement in a penal institution for more than two years of the period during which good moral character must be proved is not precluded from establishing good moral character by the provisions of § 101(f)(7). (BIA, *In the Matter of H.*, 7, I. & N. Dec. 249, June 27, 1956)

An individual who falls within the terms of § 101(f)(7) is precluded from establishing good moral character regardless of whether he was a citizen or alien during the period of his confinement to the penal institution. (BIA, *In the Matter of B.*, 7, I. & N. Dec. 405, February 19, 1957)

²¹ A married woman who lived in an illicit relationship from 1948 to 1954 has committed adultery and is precluded from establishing good moral character under

(e) "Spouse," "wife," and "husband." The terms "spouse," "wife," and "husband" are defined to exclude a spouse, wife or husband by reason of any marriage ceremony where the contracting parties are not physically present in the presence of each other, unless the marriage has been consummated. Thus, proxy, picture, television, radio and telephone marriages are not generally recognized for the purposes of the immigration laws unless the marriage is consummated subsequent to the ceremony. (Section 101(a)(35))²² The law defines the term "unmarried" as relating to an individual who, at the time, is not married, whether or not previously married. (Section 101(a)(39))

A series of administrative decisions has been rendered which bear on the validity of a marriage for the purposes of the immigration laws within the definition stated above. The more important rules follow:

(1) **General rule.** The general rule is that the validity of a marriage is determined by the law of the place of celebration; and, if valid there, it will be held valid everywhere unless a statute expressly provides to the contrary.²³

(2) **Marriage to facilitate immigration.** An alien's marriage to a United States citizen spouse, contracted solely to facilitate his admission to the United States, without intent to establish a bona fide husband-wife relationship, is invalid for immigration purposes regardless of whether it would be considered valid under the domestic law of the jurisdiction where performed.²⁴

(3) **Consummation prior to marriage not pertinent.** A proxy marriage is not valid for the purposes of the immigra-

§ 101(f)(2), notwithstanding her having obtained a decree of annulment of her marriage on May 14, 1956. Even assuming that the decree of annulment voided the alien's marriage *ab initio* so that she could not be said to have committed adultery within the purview of § 101(f)(2), a finding of lack of good moral character can be based on grounds other than those specified in the statute. Having engaged in an illicit relationship within the five-year period, her conduct falls below that of an average person and she has not established that she has been a person of good moral character during the required period. (Regional Commissioner, *In the Matter of S.*, 7, I. & N. Dec. 247, June 18, 1956)

²² See also Senate Report No. 1137, 82nd Congress, Second Session, p. 5, and House Report No. 1365, 82nd Congress, Second Session, p. 33.

²³ Beale, *The Conflict of Laws* (1935 Ed.), Vol. 2, p. 669; Attorney General, *In the Matter of P.*, 4, I. & N. Dec. 610, March 18, 1952; and BIA, *In the Matter of C.*, 7, I. & N. Dec. 108, January 31, 1956. In this decision the Board held valid, for the purposes of the immigration laws, a marriage contracted in the District of Columbia by residents of Maryland of the white and Malay races which is valid under the laws of the District of Columbia although such a marriage is prohibited and declared void in Maryland.

²⁴ BIA, *In the Matter of M.*, Interim Decision 968, December 23, 1958.

tion law if the marriage is not consummated subsequent to the ceremony although there was consummation prior to the marriage as evidenced by the birth of three children.²⁵

(4) **Divorce in absentia.** Whether an in absentia divorce, commonly referred to as "mail-order divorce," precludes, for immigration purposes, the validity of a subsequent marriage, depends on the recognition accorded it by the jurisdiction wherein the subsequent marriage was performed.²⁶ The mail-order divorce is to be distinguished from one in which one party is physically present and the other represented by counsel.²⁷

(5) **Foreign religious marriage.** For the purpose of establishing the relationship of parent and child, and conferring second preference quota status on the petitioner's mother, a foreign religious marriage was held valid for immigration purposes even though proof of its formal perfection is lacking, where it was entered into in good faith under the color of a marriage ceremony, where the parties lived together for a period of time and considered themselves married, and where children have been born to the union.²⁸

(6) **Uncle and niece marriage.** The marriage of an uncle and niece has long been considered lawful for immigration purposes if valid where performed and in the absence of proof that the state of the locus of their intended residence did not regard the cohabitation of such persons therein as criminal. Consequently, the Board held that a marriage of uncle and niece, valid under the law of Czechoslovakia where the ceremony was performed, and not subject to criminal sanctions

²⁵ BIA, *In the Matter of B.*, 5, I. & N. Dec. 698, March 4, 1954. Therefore, the Board held in this decision that the petition of a lawful permanent resident to accord third preference quota status on her alien husband whom she had married by proxy without subsequent consummation, was to be denied, although the marriage performed in Italy was valid under the laws of that country. Except for the purposes of § 101(a)(35), however, the validity of a marriage is governed by the law of the place of celebration. Therefore, a child born out of wedlock may be considered legitimated and entitled to third preference quota status, through the performance of a proxy marriage in Italy.

²⁶ Attorney General, *In the Matter of P.*, 4, I. & N. Dec. 610, March 18, 1952. This decision modified an earlier one holding that no divorce decree obtained in absentia would be valid for immigration purposes. (Attorney General, *In the Matter of O.*, 3, I. & N. Dec. 33, September 16, 1949)

Absentee divorce obtained under Jordanian-Moslem law by alien who required domicile in Connecticut is not recognized as valid when it does not comply with the statutory requirements for divorce in that State. (BIA, *In the Matter of M.*, 7, I. & N. Dec. 556, August 23, 1957)

²⁷ Regional Commissioner, *In the Matter of W.*, Interim Decision 957, February 18, 1958; apprvd. by Assistant Commissioner.

²⁸ BIA, *In the Matter of K.*, 7, I. & N. Dec. 492, June 13, 1957.

under the law of Pennsylvania where the parties cohabit, is lawful for immigration purposes.²⁹

(7) **Effect of annulment.** A decree annulling a marriage does not relate back so as to validate an attempted second marriage entered into by one of the parties prior to the rendition of the annulment decree.³⁰

(8) **Japanese marriage.** A marriage registered in accordance with Article 739 of the Japanese Civil Code on August 1, 1953, when the husband was in the United States and the wife in Japan, which was preceded by a civil or religious Japanese or Christian ceremony and cohabitation, is regarded as a valid and subsisting marriage and does not fall within the proscription of Section 101(a) (35).³¹

(f) **"Parent," "father," and "mother."** The terms "parent," "father," and "mother" mean a parent, father or mother only where the relationship exists by reason of any of the circumstances set forth under the definition of the term "child" in Section 101(b) (1). (Section 101(b) (2))³²

Consequently, the alien stepfather of an American citizen over twenty-one years of age may be considered his "father" only if the American citizen had not reached the age of eighteen years at the time the marriage of his mother and stepfather occurred. An alien adoptive parent seeking second preference quota status as a "parent" of an American citizen may be accorded this status only if the adoption creating the relationship took place while the adopted son or daughter was under the age of fourteen years and had, after the adoption, been in the legal custody of, and resided with, the adopting parent for at least two years. The alien mother, but not the alien natural father, of an American citizen born out of wedlock, may derive the benefits accorded by the immigration laws to the "parent" of an American citizen.

While for immigration purposes a "child" ceases to be a child even if it fits into the various categories when it reaches the age of twenty-one or becomes married, the parent, once

²⁹ BIA, *In the Matter of T.*, Interim Decision 1047, January 20, 1960. This decision which is based on a finding that under the Pennsylvania Marriage Law of 1953, marriages between uncles and nieces, although within prohibited degree of consanguinity, are regarded as voidable rather than void, modified an earlier ruling of the Board (*In the Matter of G.*, 6, I. & N. Dec. 377, October, 14, 1954) which held such marriages void and criminal.

³⁰ BIA, *In the Matter of R.*, 7, I. & N. Dec. 182, April 24, 1956.

³¹ BIA, *In the Matter of H.H.*, 6, I. & N. Dec. 278, August 25, 1954. See also BIA, *In the Matter of S.*, 7, I. & N. Dec. 354, November 20, 1956.

³² The definition of the term "child" is discussed in ch. 12, § 2(b).

the required relationship has been established, always remains a parent.³³

The natural parent of a child who was adopted while under the age of fourteen and who, after adoption, had been in the legal custody of, and resided with, the adoptive parent for at least two years, may not be accorded, by virtue of this natural parentage, any right, privilege or status under the Immigration and Nationality Act. (Section 101(b)(1)(E))³⁴

³³ BIA, *In the Matter of G.*, Interim Decision 1004, May 28, 1959. With this decision the Board overruled its earlier decision in which it held that an alien had ceased to be a "parent" as defined because his American citizen son was over twenty-one years of age. (BIA, *In the Matter of G.*, Interim Decision 954, September 25, 1958)

³⁴ However, the natural parents of an adult naturalized United States citizen who was legally adopted in the United States at the age of fifteen were held entitled to derive from their son second preference quota status. The son's relationship to his natural parents remained unchanged for immigration purposes since he did not acquire immigration rights from his adoptive parents pursuant to an adoption as contemplated in Section 101(b)(1)(E). (BIA, *In the Matter of B.*, Interim Decision 1095, August 22, 1960)

PART II

IMMIGRANTS

CHAPTER 6

CLASSES AND CLASSIFICATION OF IMMIGRANTS

SECTION.

1. Definition of immigrant.
2. Classification symbols for immigrants.

§ 1. **Definition of immigrant.**—All aliens desiring to come to the United States are classified either as immigrants or nonimmigrants. The Immigration and Nationality Act defines the various classes of nonimmigrants and provides that any alien not falling within one of these classes of nonimmigrants is to be classified as an immigrant. (Section 101(a)(15))¹

Immigrants are either quota immigrants or nonquota immigrants depending on whether they are subject to quota restrictions. Quota immigrants are aliens who may not be issued immigrant visas unless quota numbers are available for issuance to them in the fiscal year in which they apply for visas or, if quota numbers are not then available, until their turns are reached on the quota waiting list. Nonquota immigrants, on the other hand, are not subject to any numerical limitations.

Within the class of quota immigrants the law, as described in Chapter 11, gives preference in the allocation of quota numbers to certain aliens on the basis of their professional or vocational education, training or skill, and to certain close relatives of American citizens and of aliens lawfully admitted for permanent residence.

An alien, though entitled to nonquota or preference quota status, may elect to apply for a nonpreference quota visa. For

¹ Nonimmigrants, fully described in Part III, are aliens who are within one of the following classes:

foreign government officials,
international organization aliens,
NATO aliens,
temporary visitors for business or pleasure,
students,
exchange visitors,
treaty traders and investors,
representatives of the foreign press, radio, film, or other information media,
temporary workers and industrial trainees,
aliens in transit,
crewmen.

example, the wife of an American citizen, although entitled to nonquota status if the Attorney General approves a petition filed by her husband, is permitted to apply for a nonpreference quota visa thus obviating the need for a petition and the fee required in connection with it.

§ 2. Classification symbols for immigrants.—The statute requires that in the case of a quota immigrant the visa specify his particular status under the quota, and in the case of a non-quota immigrant his particular nonquota category. (Section 221(a)) Visa regulations meet this requirement by prescribing symbols for each class of immigrants. (22 CFR 42.12)

(a) The following symbols are prescribed in the case of nonquota immigrants under the Immigration and Nationality Act:

Class	Section of the law	Symbol to be inserted in visa
Spouse of United States citizen.....	101(a)(27)(A).....	M-1
Child of United States citizen.....	do.....	M-2
Returning resident.....	101(a)(27)(B).....	N
Native of certain Western Hemisphere countries.....	101(a)(27)(C).....	O-1
Spouse of alien classified O-1 (unless O-1 in own right)....	do.....	O-2
Child of alien classified O-1 (unless O-1 in own right)....	do.....	O-3
Person who lost United States citizenship by marriage.....	101(a)(27)(D) and 324(a).....	P-1
Person who lost United States citizenship by serving in foreign armed forces.	101(a)(27)(D) and 327.....	P-2
Minister of religion.....	101(a)(27)(F).....	Q-1
Spouse of alien classified Q-1.....	do.....	Q-2
Child of alien classified Q-1.....	do.....	Q-3
Certain employees or former employees of United States Government abroad.	101(a)(27)(G).....	R-1
Accompanying spouse of alien classified R-1.....	do.....	R-2
Accompanying child of alien classified R-1.....	do.....	R-3

(b) The following symbols are prescribed in the case of non-quota immigrants under special legislation:

Class	Section of the law	Symbol to be inserted in visa
Eligible orphan adopted abroad.....	4(b)(2)(A), Act of Sept. 11, 1957, as amended.	K-1
Eligible orphan to be adopted.....	4(b)(2)(B), Act of Sept. 11, 1957, as amended.	K-2
Spouse or child of adjusted first preference immigrant...	9, Act of Sept. 11, 1957, as amended.	K-3
Beneficiary of first preference petition approved prior to July 1, 1958.	12A, Act of Sept. 11, 1957, as amended.	K-4
Spouse or child of beneficiary of first preference petition approved prior to July 1, 1958.	do.....	K-5
Beneficiary of second preference petition approved prior to July 1, 1957.	12, Act of Sept. 11, 1957, as amended.	K-6
Beneficiary of third preference petition approved prior to July 1, 1957.....	do.....	K-7

German expellee.....	15(a)(1), Act of Sept. 11, 1957, as amended.	K-8
Netherlands refugee or relative.....	15(a)(2), Act of Sept. 11, 1957, as amended.	K-9
Refugee-escapee.....	15(a)(3), Act of Sept. 11, 1957, as amended.	K-10
Azores natural calamity victim.....	1(A), Act of Sept. 2, 1958, as amended.	K-11
Accompanying spouse or unmarried minor son or daughter of alien classified K-11.	1, Act of Sept. 2, 1958, as amended.	K-12
Netherlands national displaced from Indonesia.....	1(B), Act of Sept. 2, 1958, as amended.	K-13
Accompanying spouse or unmarried minor son or daughter of alien classified K-13.	1, Act of Sept. 2, 1958, as amended.	K-14
Parent of United States citizen registered prior to Dec. 31, 1953.	4, Act of Sept. 22, 1959.....	K-15
Spouse or child of alien resident registered prior to Dec. 31, 1953.	.....do.....	K-16
Brother, sister, son, or daughter of United States citizen registered prior to Dec. 31, 1953.	.....do.....	K-17
Spouse or child of alien classified K-15, K-16, or K-17.	.....do.....	K-18
Parent of United States citizen admitted as alien under Refugee Relief Act of 1953.	6, Act of Sept. 22, 1959.....	K-19
Spouse or child of alien admitted under Refugee Relief Act of 1953.	.....do.....	K-20

(c) The following symbols are prescribed in the case of quota immigrants:

Class	Section of the law	Symbol to be inserted in visa
First preference: Selected immigrant.....	203(o)(1).....	T-1
First preference: Spouse of alien classified T-1.....	.....do.....	T-2
First preference: Child of alien classified T-1.....	.....do.....	T-3
Second preference: Parent of United States citizen.....	203(o)(2).....	U-1
Second preference: Unmarried son or daughter of United States citizen.	.....do.....	U-2
Third preference: Spouse of alien resident.....	203(o)(3).....	V-1
Third preference: Unmarried son or daughter of alien resident.	.....do.....	V-2
Fourth preference: Brother or sister of United States citizen.	203(o)(4).....	W-1
Fourth preference: Married son or daughter of United States citizen.	.....do.....	W-2
Fourth preference: Accompanying spouse of brother, sister, son, or daughter of United States citizen.	.....do.....	W-3
Fourth preference: Accompanying child of brother, sister, son, or daughter of United States citizen.	.....do.....	W-4
Fourth preference: Adopted son or daughter of United States citizen who is beneficiary of petition approved prior to effective date of the Act of Sept. 22, 1959.	5(c), Act of Sept. 22, 1959.....	W-5
Nonpreference quota immigrant.....	203(o)(4).....	X

CHAPTER 7

NONQUOTA IMMIGRANTS

SECTION.

1. Summary.
2. Spouse and children of American citizen.
 - (a) Definition.
 - (b) Procedure.
 - (c) Scope.
3. Returning resident aliens.
 - (a) Definition.
 - (b) Procedure.
 - (c) Scope.
 - (d) Commuters.
4. Natives of nonquota countries of the Western Hemisphere, their spouses and children.
 - (a) Definition.
 - (b) Scope.
 - (1) Geographical limitations.
 - (2) Asian persons.
 - (3) Spouse and child.
 - (4) Alternate classification.
 - (c) Procedure.
5. Women expatriates.
6. Military expatriates.
7. Child expatriates.
8. Ministers of religion.
 - (a) Definition.
 - (b) Scope and interpretation.
 - (c) Procedure.
9. United States Government employees.
 - (a) Definition.
 - (b) Scope.
 - (c) Procedure.

§ 1. **Summary.**—The Immigration and Nationality Act accords nonquota status and thereby relieves from any numerical restrictions the following classes of immigrants:

- (a) Spouses and children of American citizens,
- (b) Returning resident aliens,
- (c) Natives of certain independent countries of the Western Hemisphere, their spouses and children,
- (d) Women expatriates,
- (e) Military expatriates,
- (f) Child expatriates,
- (g) Ministers of religion, and
- (h) Certain United States Government employees and former employees.

Since the enactment of the Immigration and Nationality Act in 1952, various acts of Congress have accorded nonquota status to certain groups of aliens either to take care of pressing international situations which called for a solution through migration, as in the case of Netherlands nationals displaced from the Republic of Indonesia or to provide relief for the increasing number of skilled aliens and relatives of American citizens and permanent resident aliens who, though entitled to preference quota status, have to anticipate an extended waiting period in view of the oversubscription of certain quotas. Also, Congress accorded on a temporary basis nonquota status to certain orphans adopted or to be adopted by American citizens.¹

The classes of nonquota immigrants under the Immigration and Nationality Act are discussed in this chapter; those created by special legislation are discussed separately in view of their passing importance.²

§ 2. Spouse and children of American citizen.

(a) **Definition.** An immigrant who is the child or spouse of a United States citizen is entitled to nonquota status.³ (Section 101(a)(27)(A) and 22 CFR 42.21) The separation of married persons because of mental illness of the spouse does not affect the validity of the marital relationship which is only dissolved by death or court decree. Consequently, an alien who is separated from his United States citizen spouse by reason of her mental illness is eligible for nonquota status.⁴

(b) **Procedure.** A consular officer may classify the spouse or child of an American citizen as a nonquota immigrant only upon the basis of an approved petition filed in the alien's behalf with the Immigration and Naturalization Service by the citizen spouse or parent.⁵

A nonquota visa issued to the spouse of an American citizen is identified by the insertion in the visa of the symbol "M-1" and a visa issued to the child of an American citizen is identified by the symbol "M-2." (22 CFR 42.12(a))

(c) **Scope.** The spouse and child of a United States citizen, in order to be admissible into the United States as a nonquota

¹ See chs. 51, 52.

² The Immigration and Nationality Act left undisturbed the provisions of the Central Intelligence Act of 1949 which permits the permanent admission of 100 aliens annually without qualitative or quota restrictions, see ch. 1, § 13(j).

³ For definition of term "spouse" see ch. 5, § 3(e); for definition of term "child" see ch. 12, § 2(b).

⁴ BIA, *In the Matter of E.*, 5, I. & N. Dec. 305, June 23, 1953.

⁵ See ch. 16, § 8.

immigrant, must fulfill the requirements of the law not only at the time of visa issuance but also at the time of application for admission into the United States. Therefore, a child who was under twenty-one years of age and unmarried at the time he was issued a visa is not entitled to admission as a nonquota immigrant if at the time of his arrival in the United States he has become twenty-one years of age or married. Similarly, an alien who was issued a nonquota visa as the spouse of an American citizen whose marriage to the American citizen has been terminated by divorce or death by the time of his arrival at a port of entry is not entitled to nonquota status as the spouse of an American citizen. (Sections 205(d) and 211(a)) If, under these circumstances, the alien could not have known his inadmissibility before his departure for the United States he may be admitted under certain circumstances in the discretion of the Attorney General.⁶

In issuing an immigrant visa to an alien child as a nonquota immigrant on the basis of his relationship to an American citizen the consular officer will warn the child if he is approaching the age of twenty-one years that he will not be admissible as a nonquota immigrant if he fails to apply for admission at a port of entry into the United States before he reaches the age of twenty-one years. (22 CFR 42.122(d))

§ 3. Returning resident aliens.

(a) **Definition.** An immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad, is classifiable as a nonquota immigrant. (Section 101(a)(27)(B))

When applying for a nonquota visa a returning resident alien must prove that:

(1) he had the status of an alien lawfully admitted for permanent residence at the time of his departure from the United States;

(2) he departed from the United States with the intention of returning thereto, and has not abandoned this intention; and

(3) he is returning to the United States from a temporary visit abroad and, if his stay abroad was protracted,

⁶ See ch. 33, § 17(b).

that this stay was caused by reasons beyond his control and for which he was not responsible.⁷ (22 CFR 42.22(a))

(b) **Procedure.** Ordinarily, the documentation required by the applicant in connection with his application for a nonquota visa as a returning resident alien will be limited to those records which relate to the period of his residence in the United States after his admission and the period of his temporary visit abroad. (22 CFR 42.22(b))

A nonquota visa issued to a returning resident alien is identified by the insertion in the visa of the symbol "N." (22 CFR 42.12(a))

(c) **Scope.** An alien lawfully admitted for permanent residence who wishes to depart temporarily from the United States is exempted from the visa requirement if he returns within one year in possession of his alien registration receipt card, Form I-151, or within two years in possession of a reentry permit issued by the Immigration and Naturalization Service before his departure.⁸ Consequently, a returning resident alien needs to apply for a nonquota visa only if he has not secured a reentry permit before his departure from the United States and wishes to return after more than one year of residence abroad, or if his reentry permit has expired.

Before a nonquota visa may be issued to a returning resident alien he must meet all the qualitative tests any other applicant for an immigrant visa has to meet. However, the Attorney General may waive certain grounds of disqualification in the case of an alien who is returning to an unrelinquished domicile of seven consecutive years.⁹

(d) **Commuters.** Commuters are aliens lawfully admitted for permanent residence who continue to retain their place of residence in foreign contiguous territory, i.e., Canada or Mexico, while commuting to their place of employment in the United States. The commuter class was created administratively after it was held that aliens entering the United States to engage in existing employment or to seek employment could not be considered visitors for business but had to be classified as immigrants under the Immigration Act of 1924. The Board of Immigration Appeals points out that "the commuter situation

⁷ An alien who abandoned his residence in the United States and deported to his native country with the intention of remaining there was not entitled to receive a non-quota immigrant visa as a returning resident alien. Possession of such a visa is not conclusive in admission proceedings before the Immigration Service. The Service is required to reexamine the alien's admissibility to enter the United States. (BIA, *In the Matter of T.*, Interim Decision 1040, December 10, 1959)

⁸ See ch. 44.

⁹ See ch. 34, § 2.

manifestly does not fit into any precise category found in the immigration statutes" and that "the status is an artificial one, predicated upon good international relations maintained and cherished between friendly neighbors."¹⁰ Earlier the Board held that the administrative practice of considering commuters as permanent residents had not been disturbed by the Immigration and Nationality Act.¹¹ In recognition of the realities of living and working conditions along borders, the immigration authorities have in fact accorded the commuter an assimilated returning resident status although he has never given up his residence abroad and has not established one in the United States.

A commuter is permitted to reenter the United States with his "Alien Registration Receipt and Border Crossing Card," Form I-151,¹² as long as he has not been out of employment in the United States for more than six months. Once he has been out of employment for more than six months he is not admissible unless he is in possession of an immigrant visa and meets all other admission requirements applicable to an immigrant, regardless of temporary entries in the meanwhile for other than employment purposes.¹³ However, a commuter remains entitled to his classification, notwithstanding an absence of six months and interruption of his work for that period, if his employment, job or position has not been lost and if the interruption was due to circumstances beyond his control such as serious illness, pregnancy, or a disabling injury, all of which toll the six-month period until the commuter becomes again employable.¹⁴

§ 4. Natives of nonquota countries of the Western Hemisphere, their spouses and children.

(a) **Definition.** An immigrant who was born in Canada, Mexico, Cuba, Haiti, the Dominican Republic, the Canal Zone,

¹⁰ *Matter of M.D.S. & L. G. & W.D.C.*, Interim Decision 967, December 12, 1958.

¹¹ BIA, *In the Matter of H.O.*, 5, I. & N. Dec. 716, March 16, 1954. In this decision the Board discusses in detail the history and background of the commuter doctrine. See also Central Office, *In the Matter of L.*, 4, I. & N. Dec. 454, August 16, 1951.

In a recent decision the U. S. District Court for the District of Columbia disagreed with the view that commuters may be considered permanent residents when it held that Mexicans commuting daily to work in United States packing houses are not "returning lawfully domiciled resident aliens" and are therefore subject to exclusion on the basis of a determination by the Secretary of Labor, pursuant to § 212(a)(14), that their admission would adversely affect wages and working conditions of American packing house workers. (*Amalgamated Meatcutters and Butcher Workmen v. Rogers and Swing*, 186 F. Supp. 114, July 7, 1960) See ch. 33, § 11 for discussion of § 212(a)(14).

¹² See ch. 13, § 1(b)(3).

¹³ *Matter of M.D.S. & L.G. & W.D.C.*, *supra*.

¹⁴ See *Matter of L.*, *supra*, and BIA, *In the Matter of L.*, Interim Decision 1076, May 11, 1960.

or an independent country of Central or South America, and the spouse or the child of any such immigrant, if accompanying or following to join him, are classifiable as nonquota immigrants. (Section 101(a)(27)(C))¹⁵

(b) Scope.

(1) Geographical limitations. Nonquota status is accorded only aliens born in certain specified countries in the Western Hemisphere or in an "independent country of Central or South America." Any colony or dependent area in the Western Hemisphere which should gain an independent status in the future could under existing law be considered a nonquota area only if it is determined that it is situated in Central or South America.

(2) Asian persons. An immigrant who is a Chinese person or who is otherwise attributable by as much as one half of his ancestry to a people or peoples indigenous to the Asia-Pacific Triangle is not entitled to nonquota status on the basis of his birth in one of the nonquota countries of the Western Hemisphere unless he is the child of a parent who is entitled to nonquota status as a native of one of those countries and accompanies or follows to join such parent. (Section 202(a)(5) and 22 CFR 42.23(c)) For example, a person of Chinese ancestry born in Brazil is chargeable to the Chinese quota; and a person of Japanese ancestry born in Canada is chargeable to the quota of Japan. However, the child of a Japanese mother and a father of non-Asian ancestry born in Canada, irrespective of the child's place of birth, is entitled to nonquota status if accompanying or following to join his Canadian father. On the other hand, the Japanese wife of an alien of non-Asian ancestry born in Canada may not be classified as a nonquota immigrant regardless of the fact that she is accompanying or following to join him.¹⁶

(3) Spouse and child. The spouse or child of a native of a nonquota country of the Western Hemisphere who himself is not a native of a nonquota country of the Western Hemisphere, in order to derive nonquota status from the principal applicant, must establish that he is accompanying a parent or spouse born in a nonquota country, or that he is following to join a spouse or parent born in such country who has the status in the United States of an alien lawfully admitted for permanent residence. (22 CFR 42.23(b))

¹⁵ For definition of term "spouse" see ch. 5, § 3(e); for definition of term "child" see ch. 12, § 2(b).

¹⁶ See also ch. 10, § 3.

The eligibility of a spouse or child for nonquota status is not affected by the fact that the marriage of the spouse or the birth of the child occurred subsequent to the admission of the principal alien into the United States. (22 CFR 42.23(b))

An alien spouse or parent may establish that he was lawfully admitted into the United States by filing with the Immigration and Naturalization Service Form I-550, "Application for Verification of Lawful Entry."

A spouse or child born in one of the nonquota countries of the Western Hemisphere is classifiable as a nonquota immigrant in his own right, regardless of whether he may be accompanying or following to join a parent or spouse who is a quota immigrant or a nonquota immigrant.

(4) **Alternate classification.** An alien entitled to nonquota classification as a native of one of the nonquota countries of the Western Hemisphere who appears also qualified for nonquota status under another classification will usually find it desirable to apply for nonquota classification as a Western Hemisphere native. For example, the Brazilian wife of an American citizen may be issued a nonquota visa as a native of Brazil by proving her birth in that country while a visa petition would have to be filed by her American citizen husband were she to apply for a nonquota visa as the spouse of an American citizen.¹⁷

(c) **Procedure.** A nonquota immigrant visa issued to a native of one of the nonquota countries of the Western Hemisphere is identified by the insertion in the visa of the symbol "O-1." The nonquota visa issued to the spouse or child of such an alien who is not entitled to nonquota status in his own right but derives it from the principal applicant, is identified by the insertion of the symbols "O-2" or "O-3," respectively. (22 CFR 42.12(a))

§ 5. Women expatriates.—An immigrant who was a citizen of the United States and lost her citizenship by marriage to an alien before September 22, 1922, or by the loss of citizenship of her spouse, or by marriage to an alien ineligible to citizenship, is classifiable as a nonquota immigrant. Such alien is entitled to nonquota immigrant status regardless of her marital status at the time of the issuance of the visa. If such alien, however, has acquired another nationality by any affirmative act other than marriage she is not classifiable as a nonquota

¹⁷ See § 2(b), *supra*.

immigrant under this provision of law. (Sections 101(a) (27) (D) and 324(a) ; 22 CFR 42.24(a))

A nonquota visa issued to an alien who lost United States citizenship by marriage is identified by the insertion in the visa of the symbol "P-1." (22 CFR 42.12(a))

§ 6. Military expatriates.—An immigrant is classifiable as a nonquota immigrant if he is a former citizen of the United States who lost his citizenship under the provisions of Section 401(c) of the Nationality Act of 1940 or of Section 349(a) (3) of the Immigration and Nationality Act by entering, or serving in, the armed forces of a foreign state and if he may apply for reacquisition of citizenship under the provisions of Section 327 of the Act.¹⁸ (Section 101(a) (27) (D) and 22 CFR 42.24(b))

A nonquota immigrant visa issued to an alien who lost United States citizenship by service in foreign armed forces is identified by the insertion in the visa of the symbol "P-2." (22 CFR 42.12(a))

¹⁸ Section 327 reads as follows:

"(a) Any person who, (1) during World War II and while a citizen of the United States, served in the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945, and (2) has lost United States citizenship by reason of entering or serving in such forces, or taking an oath or obligation for the purpose of entering such forces, may, upon compliance with all the provisions of title III of this Act, except Section 316(a), and except as otherwise provided in subsection (b), be naturalized by taking before any naturalization court specified in Section 310(a) of this title the oath required by Section 337 of this title. Certified copies of such oath shall be sent by such court to the Department of State and to the Department of Justice.

"(b) No person shall be naturalized under subsection (a) of this section unless he —

"(1) is, and has been for a period of at least five years immediately preceding taking the oath required in subsection (a), a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and

"(2) has been lawfully admitted to the United States for permanent residence and intends to reside permanently in the United States.

"(c) Any person naturalized in accordance with the provisions of this section, or any person who was naturalized in accordance with the provisions of Section 323 of the Nationality Act of 1940, shall have, from and after such naturalization, the status of a native-born, or naturalized, citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided*, That nothing contained herein, or in any other provision of law, shall be construed as conferring United States citizenship retroactively upon any such person during any period in which such person was not a citizen.

"(d) For the purposes of this section, World War II shall be deemed to have begun on September 1, 1939, and to have terminated on September 2, 1945.

"(e) This section shall not apply to any person who during World War II served in the armed forces of a country while such country was at war with the United States." (66 Stat. 248, 249)

§ 7. **Child expatriates.**—An immigrant who lost his American citizenship before January 1, 1948, through the naturalization of a parent or parents in a foreign state was classifiable as a nonquota immigrant if he applied for a visa and for admission into the United States on or before December 23, 1953. (Section 101(a)(27)(E)) This provision of law has become inoperative.

§ 8. **Ministers of Religion.**

(a) **Definition.** A minister of a religious denomination, his spouse and children,¹⁹ if accompanying or following to join him, are classifiable as nonquota immigrants if:

(1) the minister has been carrying on his vocation continuously for at least two years immediately preceding the time of his application for admission into the United States,

(2) he seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and

(3) his services are needed by such religious denomination having a bona fide organization in the United States. (Section 101(a)(27)(F))

Visa regulations define the term "minister" as "a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergyman of such denomination." The term "minister" does not include a lay preacher not authorized to perform the duties usually performed by a regularly ordained pastor or clergyman of the denomination of which he is a member, and does not include a nun, lay brother or cantor. (22 CFR 42.25(c))

(b) **Scope and interpretation.** Although the statute requires that in order to be entitled to nonquota status a minister must have carried on his vocation continuously for at least two years immediately preceding the time of his application for admission, it has been held that a minister who had not practiced his vocation for reasons beyond his control, namely because he had been an involuntary exile or war refugee, did not thereby disqualify himself from nonquota status.²⁰

¹⁹ For definition of term "spouse" see ch. 5, § 3(e); for definition of term "child" see ch. 12, § 2(b).

²⁰ BIA, *In the Matter of M.*, 1, I. & N. Dec. 147, July 21, 1941; Central Office, *In the Matter of B.*, 3, I. & N. Dec. 162, January 23, 1948.

The Salvation Army is a religious denomination and its commissioned officers are ministers of religion.²¹

When a priest has been ordained as such in the Catholic Church, he is a minister of a religious denomination as contemplated by the statute. The fact that he engaged in a course of study in furtherance of his vocation does not support a conclusion that he has abandoned his calling as a minister. A Catholic priest whose duties in the United States will include teaching in seminaries for the training of priests and brothers and teaching in a boarding school where he is required to teach some academic subjects besides teaching religion and doing religious work, is regarded as seeking to enter the United States solely to carry on his vocation as a minister of a religious denomination.²²

The nonquota classification of the spouse and child of a minister of religion is contingent on the classification as a minister of the principal applicant. Thus, nonquota classification may not be accorded to the spouse or child following to join a minister if the minister entered the United States as a nonpreference quota immigrant, perhaps because the quota to which he was chargeable was readily available.

(c) Procedure. A minister is classifiable as a nonquota immigrant only on the basis of a petition filed by an authorized officer of a religious denomination and approved by the Immigration and Naturalization Service. (22 CFR 42.25(a))²³ The spouse or child of a minister, whether accompanying or following to join him, is classifiable as a nonquota immigrant without a petition having been filed by either the employing denomination or by the minister himself. To qualify as nonquota immigrants the spouse and child must only prove that they are accompanying a minister entitled to nonquota status or that they are following to join an alien who was admitted under nonquota status being a minister of religion.

A nonquota visa issued to a minister of religion is identified by the insertion in the visa of the symbol "Q-1." A nonquota visa issued to the spouse or child of a minister of religion is identified by the insertion in the visa of the symbol "Q-2" or "Q-3," respectively. (22 CFR 42.12(a))

§ 9. United States Government employees.

(a) Definition. An alien who is an employee or a retired former employee of the United States Government abroad, and

²¹ Central Office, *In the Matter of N.*, 5, I. & N. Dec. 173, March 16, 1953.

²² Central Office, *In the Matter of Z.*, 5, I. & N. Dec. 700, March 5, 1954.

²³ See ch. 16, § 12(a).

his accompanying spouse and children,²⁴ are classifiable as non-quota immigrants, if he:

(1) has performed faithful service for one or more establishments of the United States Government abroad for a total of fifteen years or more;

(2) was honorably retired, if a former employee;

(3) has been recommended for the granting of nonquota status by the principal officer of a Foreign Service establishment in exceptional circumstances; and

(4) the Secretary of State has approved this recommendation and has made a finding that it is in the national interest to grant nonquota status. (Section 101(a)(27)(G) and 22 CFR 42.26)

(b) Scope. The spouse or child of an alien described above is qualified for classification as a nonquota immigrant only if he is accompanying the principal alien. A spouse or child who is following to join the principal alien is not entitled to non-quota status.

The spouse or child of a principal alien may be considered "accompanying" him if a visa is issued to the spouse or child within four months of the date of visa issuance to the principal alien. (22 CFR 42.1)²⁵ This interpretation of the term "accompanying" applies regardless of whether visas are issued to the principal alien and his spouse or child at the same or at different consular offices, or whether the principal alien at the time of the issuance of a visa to his spouse or child has already been admitted to the United States. In view of the derivative character of his nonquota status, a spouse or child to whom a visa is issued under the principal applicant's classification is not admissible at a port of entry of the United States if he arrives before the principal applicant.

(c) Procedure. A nonquota immigrant visa issued to a United States Government employee or former employee is identified by the insertion in the visa of the symbol "R-1." Such visa issued to his spouse or child is identified by the symbol "R-2" or "R-3," respectively. (22 CFR 42.12(a))

²⁴ For definition of term "spouse" see ch. 5, § 3(e); for definition of term "child" see ch. 12, § 2(b).

²⁵ For background of this interpretation see pp. 66 and 67 of First Edition.

CHAPTER 8

THE QUOTA IMMIGRATION SYSTEM

SECTION.

1. History.
 - (a) Summary.
 - (b) The national origins system.
2. Immigration quotas under the Immigration and Nationality Act.
 - (a) Formula.
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 - (d) Limitation on use of quotas.
3. Limitation of the use of governing country quota by persons born in colonies and dependencies—Subquotas.
4. Reduction of annual quotas.
5. Quota control—Allocation of quotas for visa issuance.
6. Annual quotas and subquotas.

§ 1. History.

(a) **Summary.** Immigration quotas as known in American immigration law have a twofold purpose: to restrict numerically the volume of immigration into the United States and to select the immigrants who may enter under the quota system in such way as to preserve, as far as possible, the balance among the various ethnic elements in the American population.

Before the Immigration and Nationality Act became effective, American immigration law had known three types of immigration quota systems. The First Quota Act of May 19, 1921¹ which was in effect from June 3, 1921 to June 30, 1924 provided for an immigration quota equal to three per cent of the number of foreign born persons of a given nationality and resident in continental United States in 1910. The total quota, based on the 1910 census, was 357,803. The second quota system which was incorporated in the Immigration Act of 1924 as a provisional measure was in effect from July 1, 1924, to June 30, 1929.² It fixed the number of quota immigrants at two per cent of the number of foreign born persons of a given nationality living in continental United States in 1890. The total of this quota, based on the 1890 census, was 164,667. The third quota system, contained in the Immigration Act of 1924 as a permanent method of calculation, followed the so-called

¹ 42 Stat. 5.

² Section 11(a) (43 Stat. 153, 159).

national origins system and provided for an annual quota of 150,000.³

(b) **The national origins system.** Under the national origins system of the 1924 Act the annual quota for any quota country had the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin had to the total number of inhabitants in continental United States in 1920. For the purpose of this computation the term "inhabitants in continental United States in 1920" did not include descendants of American aborigines, descendants of slave immigrants, aliens ineligible to citizenship or their descendants, or immigrants from independent countries of the Western Hemisphere or their descendants, the latter group not being subject to quota restrictions. The national origin of the inhabitants in continental United States in 1920 was ascertained by determining as nearly as possible the number of inhabitants whose origin by birth or ancestry was attributable to the various countries to which separate quotas were allocated.

After the enactment of the Immigration Act of 1924, an interdepartmental committee representing the Secretary of State, the Secretary of Commerce and the Secretary of Labor was appointed to prepare an analysis of the national origin of the American population which became the basis for the determination of the annual quota to be proclaimed by the President. In submitting its report the committee offered the following comments on the processes involved in making this analysis and on some of the problems encountered by it. References are to the Immigration Act of 1924.

"1. From the total population of continental United States as returned in the 1920 census (105,710,620) deductions, as provided in section 11, paragraph (d) of the act, must be made for (1) aliens ineligible to citizenship and their descendants, (2) descendants of slave immigrants, and (3) descendants of American aborigines. The deductions total 10,889,705, leaving a balance of 94,820,915.

"2. The remainder of the population must then be attributed to countries of birth or ancestry, as required by section 11, paragraph (c), of the immigration act.

"3. The population which is thus attributed to nonquota countries—namely, Canada, Newfoundland, the 20 Latin-American Republics, and the Canal Zone—must then be deducted from the total population of the United States, less the deductions previously made as described above, leaving a remainder of 89,332,158. This comprises the number of 'inhabitants in continental United States in 1920' in the sense of section 11, paragraph(d), of the immigration act.

³ Section 11(b) (43 Stat. 153, 159).

"4. The annual quota for each nationality must then be computed by multiplying the number of inhabitants in continental United States attributed to that nationality by the quotient obtained by dividing 150,000 by 89,332,158 (the total number of 'inhabitants in continental United States in 1920'), as required by the provisions of section 11, paragraph (b), of the immigration act. In cases where the quota thus computed is less than 100, the minimum quota of 100 must be assigned, as provided by law. The quota totals, therefore, exceed 150,000 by as much as the quotas of the countries with a minimum quota of 100 each exceed the quotas computed by the simple formula indicated above.

"In carrying out the above processes the principal and most responsible task which devolved upon the quota committee was, in the language of the immigration act, that of 'determining as nearly as may be, in respect of each geographical area which under section 12 is to be treated as a separate country * * * the number of inhabitants in continental United States in 1920 whose origin by birth or ancestry is attributable to such geographical area.'

"On account of the intermixture of the various national stocks resulting from intermarriage, it is obviously impossible to divide the population of the United States into distinct classes, such that each class shall consist exclusively of persons whose ancestors were all born in the same country. That being the case, it was assumed that the 'number of inhabitants' was meant to be used as a measure of the relative size or amount of the various national stocks composing the white population of the United States. So the problem was to determine what proportion or percentage of the white blood in the population of the United States was derived from each country of origin and express the result in terms of an equivalent number of inhabitants. In other words, the 'inhabitant' was a unit of measure in which to express the amount or proportion of English blood, Irish blood, etc., in the composition of the American people. That seemed to be a necessary interpretation of the law and is consistent with the provision that the determination of national origin 'shall not be made by tracing the ancestors or descendants of particular individuals.'

"The immigration act provides that the determination of national origin shall 'be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable.'

"The act, it may be noted, does not contemplate or require exact figures, but provides that the national origin shall be determined 'as nearly as may be.' And since there is approximately one unit in the immigration quotas to each 600 inhabitants of the United States, a considerable numerical deviation from exactness in determining the national origin of the population may exist without materially affecting the quotas. Thus, a deviation of 6,000 from exactness in the figures for any nationality would make a difference of only 10 in the quota; a deviation of 60,000 would result in a difference of 100; and it would take a deviation of approximately 600,000 to make a difference of 1,000 in any immigration quota."⁴

Since the law fixed the minimum quota for each quota country at 100, the total number of annual immigration quotas

⁴ *Immigration Quotas On The Basis Of National Origin*, Message from the President of the United States of February 27, 1928, Senate Document No. 65, 70th Congress, First Session, p. 5.

always exceeded the basic figure set by the act at 150,000. The total of annual quotas first proclaimed under the national origins provisions of the 1924 act which became effective on July 1, 1929, was 153,685. Immediately prior to the effective date of the Immigration and Nationality Act the total of the annual quotas under the Immigration Act of 1924 was fixed at 154,277.

§ 2. Immigration quotas under the Immigration and Nationality Act.

(a) **Formula.** The immigration quotas provided by the Immigration and Nationality Act follow in general the pattern of the national origins system contained in the Immigration Act of 1924. Like the old act, the present law limits the number of quota immigrants who may enter during any one year and provides by statute for the distribution of the annual quota among the various quota areas. The Immigration and Nationality Act, however, simplified the formula for the computation of quotas by providing that the annual quota of any quota area is one-sixth of one per cent of the number of inhabitants in continental United States in 1920 attributable by national origin to such quota area. (Section 201(a))

(b) **Determination of quotas.** The determination of the annual quota of any quota area is made jointly by the Secretary of State, the Secretary of Commerce, and the Attorney General. Upon the determination of the quotas by these officials the President proclaims the quotas so reported. Authority to revise quotas is also vested jointly in the Secretary of State, the Secretary of Commerce and the Attorney General. (Sections 201(b) and 202(e))⁵

(c) **Minimum quotas.** The minimum quota of any quota area is 100. However, any increase in the number of minimum quota areas above twenty within the so-called Asia-Pacific Triangle leads to a proportionate decrease in each minimum quota of this area so that the sum total of all minimum quotas within the Asia-Pacific Triangle does not exceed 2,000. (Section 202(e))⁶

(d) **Limitation on use of quotas.** The quota of each quota area places a ceiling on the number of quota immigrants who may be issued immigrant visas during any one fiscal year. These quotas are not transferable between quota areas and

⁵ A table listing the quotas currently in effect is reproduced in § 6, *infra*.

⁶ For a definition of the term "Asia-Pacific Triangle" see ch. 10. With the proclamation of a quota of 100 for Malaya on October 15, 1957, twenty minimum quotas within the Asia-Pacific Triangle have been established.

cannot be transferred within the same quota area from one fiscal year to another. Not more than ten per cent of the annual quota of any quota area may be used for visa issuance during any one of the first ten months of the quota year. The remaining balance may be used for this purpose without restriction during the last two months, i.e., May and June, of that year. (Section 201(c)(2))

§ 3. Limitation of the use of governing country quota by persons born in colonies and dependencies—Subquotas.—Under the provisions of the Immigration Act of 1924 an immigrant born in a colony or dependent area of a governing country was chargeable, without numerical restrictions, to the quota of the governing country. For example, persons born in Malta or Jamaica were chargeable to the quota of Great Britain and could be issued visas to the full extent of the availability of the British quota. In order to “prevent undue absorption of a governing country’s quota by a colony or dependency” and to “preclude colonies or dependencies from having greater preferences than the independent countries which are entitled to minimum quotas”⁷ of 100 each, the Immigration and Nationality Act provides that not more than 100 persons born in any one colony or other component or dependent area overseas from the governing country may be charged to the quota of its governing country in any one year. (Section 202(c) and 22 CFR 42.58) In other words, the law places an annual ceiling of 100 on the number of quota visas which may be issued to visa applicants born in a colony or dependency.

Visa regulations define the portion of the quota of a governing country which may be made available to quota immigrants born in a colony or other component or dependent area overseas as “subquota.” (22 CFR 42.1) The chargeability of an alien to a subquota follows in general the rules of quota chargeability.⁸

§ 4. Reduction of annual quotas.—The Immigration and Nationality Act, as did earlier immigration laws, requires that quota numbers be deducted from the current annual quotas and, in some instances, from future quotas as a result of certain acts benefiting aliens in the United States who, had they been issued visas, would have been chargeable to these quotas. While the number of visas issued to quota immigrants during any one quota year may never exceed the annual quota of a given quota

⁷ House Report No. 1365, 82nd Congress, Second Session, p. 38.

⁸ See ch. 9, § 3. The subquotas currently in effect are listed in § 6, *infra*, following the quota of the respective governing country.

area, quota numbers available for this purpose are frequently far below the ceiling set by the annual quota as a result of these statutory deductions. The law requires a reduction of annual quotas for acts other than the issuance of visas in the following cases:

(a) For each alien in the United States whose status is adjusted to that of permanent residence under the so-called suspension of deportation procedure one quota number must be deducted from the quota to which the alien would have been chargeable had he last entered the United States as an immigrant. If the quota to which the alien is chargeable is exhausted for the year in which adjustment takes place, a quota number is to be deducted from the quota of the next following year during which a quota is available. Not more than fifty per cent of any one quota may be so used in a quota year;⁹

(b) If the Attorney General admits to the United States an immigrant who is not properly charged to the quota specified in his immigrant visa or who is not a nonquota immigrant although in possession of a nonquota immigrant visa, a number is to be deducted from the alien's quota of the current or the next fiscal year;¹⁰

(c) If the status of a nonimmigrant in the United States who otherwise would have been a quota immigrant is adjusted to that of a person admitted for permanent residence under Section 245, a number is to be deducted from the alien's quota of the current fiscal year;¹¹

(d) If the status of an alien in the United States who otherwise would have been a quota immigrant is adjusted to that of a person admitted for permanent residence under Section 13 of the Act of September 11, 1957, the quota to which the alien is chargeable is reduced by one number for the fiscal year then current or, if the quota is over-subscribed, for the next following year in which a quota is available. Not more than fifty per cent of any one quota may so be used in a quota year;¹²

(e) If an alien in the United States who otherwise would have been a quota immigrant is granted permanent resident status by private law the deduction of a number from his quota is usually stipulated.¹³

The Immigration and Nationality Act specifically provides that charges against future quotas required by earlier acts be applied to the quotas proclaimed under it. (Section 201(e)) However, the Act of September 11, 1957, terminated, effective July 1, 1957, the quota deductions required earlier for visas issued under the Displaced Persons Act of 1948, as amended,¹⁴ and for visas issued under the acts of June 30, 1950, and April 9, 1952, the so-called Shepherd Acts.¹⁵ As a result, a total

⁹ See ch. 47.

¹⁰ See ch. 33, § 17.

¹¹ See ch. 39.

¹² See ch. 39.

¹³ See ch. 49.

¹⁴ 62 Stat. 1009, 64 Stat. 219, 65 Stat. 96, 66 Stat. 277.

¹⁵ 64 Stat. 306 and 66 Stat. 50.

of 308,790 quota numbers have been restored to the various quotas, of which 308,456 were formerly deducted under the Displaced Persons Act, and 334 under the Sheepherder Acts. Under the provisions of law still requiring deductions of future quotas, a total of 5,686 quota numbers have been deducted, as of March 1, 1960, from various quotas as follows:¹⁶

Quota Area	Annual Quota	Total of Quota Numbers deducted as of March 1, 1960	Last Fiscal Year under which Deductions made
China	100	35	1966
Chinese Persons	105	2,761	2028
Estonia	115	55	2146
Greece	308	1,072	2018
Hungary	865	97	1990
Japan	185	165	1961
Latvia	235	14	2213
Lithuania	384	7	2078
Philippines	100	258	1965
Poland	6,488	340	2000
Rumania	289	149	2021
Spain	250	307	1963
Turkey	225	196	1965
U.S.S.R.	2,697	113	1981
Yugoslavia	942	117	2015

Although future quotas may be reduced up to fifty per cent of their annual volume, the restoration of the deductions formerly required under the Displaced Persons Act and the Sheepherder Acts has led to a thin spread of the still required reductions over a long period of time in many of the quotas listed above. For example, fourteen reductions from the Latvian quota are spread through the year 2213. However, quotas not previously affected by reductions under the Displaced Persons Act and the Sheepherder Acts, such as the Chinese, Japanese, and Philippine quotas, are reduced up to the fifty per cent limit through the year indicated above.

§ 5. Quota control—Allocation of quotas for visa issuance.—The control of quotas is centralized in the Visa Office of the Department of State. The objective of this control is to insure that:

(a) the total of quota numbers used for the purposes described under (b) and (c) does not exceed the annual quota proclaimed by the President;

(b) deductions are made from quotas as statutorily required for certain acts benefiting aliens in the United States

¹⁶ Visa Office Bulletin No. 51, March 1, 1960.

who would otherwise be chargeable to these quotas, such as in the case of an alien who benefited from suspension of deportation or whose status was adjusted to that of permanent residence or in the case of an alien in whose behalf a private bill was passed permitting him to remain permanently in the United States;¹⁷

(c) the remaining quota numbers are used for visa issuance by consular officers throughout the world strictly in the order of the priority of registration;¹⁸ and that

(d) not more than ten per cent of each quota is used for visa issuance during any one of the first ten months of each quota year and that the balance is used during the remaining two months of such year.¹⁹ (Section 201(c) and 22 CFR 42.60(b))

American consular officers report at regular intervals the existing demand on each quota to the Department of State. On the basis of these reports the Department of State determines the priority of registration of applicants for quota immigrant visas on a world-wide basis and accordingly allocates quota numbers for visa issuance strictly in the chronological order in which quota immigrants are registered in each class on quota waiting lists maintained at consular offices.²⁰ As pointed out earlier, as a result of the statutorily required reductions of annual quotas, quota numbers available for the issuance of quota visas frequently are considerably less than the annual quota for certain quota areas.²¹

The Department of State publishes at regular intervals in its *Visa Office Bulletins* lists showing the status of the various quotas. These lists indicate which portion of each quota is currently available or oversubscribed. In the case of oversubscribed quotas the list shows the date of priority registration which has been reached for consideration of cases on the quota waiting list.

§ 6. Annual quotas and subquotas.—The total annual quota in effect since December 21, 1960 is 156,387 compared with 154,657 first proclaimed under the formula of the Immigration and Nationality Act²² and effective January 1, 1953. During the

¹⁷ See § 4, *supra*.

¹⁸ See ch. 14, § 3.

¹⁹ See § 2(d), *supra*.

²⁰ See ch. 14, § 3.

²¹ See § 2, *supra*.

²² See § 2(a) and (b), *supra*.

interval the President issued several quota proclamations reflecting various territorial changes which required adjustments in existing quotas.²³

Listed below in alphabetical order are the quotas and subquotas for the various quota areas in effect on October 23, 1960.²⁴

*Afghanistan	100	Congo, Republic of the	100
Albania	100	Cyprus	100
Andorra	100	Czechoslovakia	2,859
Arabian Peninsula	100	Dahomey	100
Asia-Pacific	100	Danzig, Free City of	100
Australia	100	Denmark	1,175
Subquotas:		Subquota:	
*Christmas Island		Greenland	
*Cocos (Kelling) Islands		Estonia	115
*Papua, Terr. of		Ethiopia	100
Austria	1,405	Finland	566
Belgium	1,297	France	3,069
*Bhutan	100	Subquotas:	
Bulgaria	100	Delegation-General:	
*Burma	100	Algeria (Saharan	
*Cambodia	100	departments)	
Cameroons (British)	100	Overseas Departments:	
Cameroun	100	French Guiana	
Central African Republic	100	Guadeloupe	
*Ceylon	100	Martinique	
Chad	100	Reunion	
*China	100		
Chinese Persons	105		
Congo	100		

²³ Proclamation No. 2980 of June 30, 1952 (17 Fed. Reg. 6019) first established the quotas under the Immigration and Nationality Act. A comparison of the quotas then proclaimed with the annual quotas in effect under the Immigration Act of 1924 immediately preceding the enactment of the Immigration and Nationality Act will be found on pp. 49 and 51 of the First Edition.

Proclamation No. 3147 of July 9, 1956 (21 Fed. Reg. 5127) established a quota for Sudan; Proclamation No. 3158 of September 20, 1956 (21 Fed. Reg. 7423) established a quota for Tunisia; Proclamation No. 3206 of October 10, 1957 (22 Fed. Reg. 8133) established a quota for Malaya; Proclamation No. 3188 A of June 26, 1957 (22 Fed. Reg. 4629) established a quota for Ghana and abolished the quota for Togoland; Proclamation No. 3248 of June 20, 1958 (23 Fed. Reg. 4667) abolished the quotas for Egypt and Syria and established a quota for the United Arab Republic; Proclamation No. 3298 of June 3, 1959 (24 Fed. Reg. 4679) established a quota for Guinea, abolished the quota for Trieste and increased the quotas of Italy and Yugoslavia; Proclamation No. 3372 of September 23, 1960 (25 Fed. Reg. 9283) established quotas for Cameroun, the Central African Republic, Chad, Congo, Cyprus, Dahomey, Gabon, Ivory Coast, Malagasy Republic, Niger, Republic of the Congo, Somali Republic, Togo, and Upper Volta. Proclamation No. 3372 abolished the previously existing minimum quotas for Cameroun (trust territory, France), Somaliland (trust territory, Italy), and Togo (trust territory, France). Proclamation No. 3376 of October 27, 1960 (25 Fed. Reg. 10387) established quotas for the Republic of Mali, Nigerio, and the Republic of Senegal and Proclamation No. 3384 of December 21, 1960 (25 Fed. Reg. 13681) established a quota for Mauritania.

²⁴ As discussed in § 3, *supra*, subquotas represent an annual limitation of 100 quota numbers on the use of a governing country's quota by quota immigrants born in its colonies or dependencies.

* Situated in the Asia-Pacific Triangle.

Overseas Territories:

Comoro Islands
 French Polynesia
 (French Oceania)
 French Somaliland
 French Southern and
 Antarctic Territories
 (Kerguelen Islands,
 etc.)

*New Caledonia
 Saint Pierre and
 Miquelon

Condominium:

*New Hebrides

Gabon	100
Germany	25,814
Ghana	100
Great Britain and Northern Ireland	65,361

Subquotas:

Aden
 Antigua
 Bahamas
 Barbados
 Basutoland
 Bechuanaland
 Bermuda
 British Guiana
 British Honduras
 *British Solomon Islands
 British Virgin Islands
 *Brunei
 Dominica
 Falkland Islands
 *Fiji
 Gambia
 Gibraltar
 *Gilbert & Ellice Islands
 Grenada
 *Hong Kong
 Jamaica
 Kenya
 *Maldiv Islands
 Malta
 Mauritius and dependencies
 Montserrat
 *North Borneo
 Northern Rhodesia
 Nyasaland
 Pitcairn Island
 St. Christopher, Nevis,
 Anguilla
 St. Helena

St. Lucia
 St. Vincent
 *Sarawak
 Seychelles
 Sierra Leone
 *Singapore
 Southern Rhodesia
 Swaziland
 *Tonga
 Trinidad
 Uganda
 Zanzibar

Greece	308
Guinea	100
Hungary	865
Iceland	100
*India	100
*Indonesia	100
Iran	100
Iraq	100
Ireland	17,756
Israel	100
Italy	5,666
Ivory Coast	100
*Japan	185
Jordan	100
*Korea	100
*Laos	100
Latvia	235
Lebanon	100
Liberia	100
Libya	100
Liechtenstein	100
Lithuania	384
Luxembourg	100
Malagasy Republic	100
*Malaya	100
Mali	100
Mauritania	100
Monaco	100
Morocco	100
Muscat & Oman	100
*Nauru	100
*Nepal	100
Netherlands	3,136

Subquotas:

*Netherlands New Guinea	
Netherlands Antilles	
Surinam	
*New Guinea	100
New Zealand	100

Subquota:

*Cook Islands	
Niger	100
Nigeria	100

* Situated in the Asia-Pacific Triangle.

Norway	2,364	South-West Africa	100
*Pacific Islands (Trust Terr.)	100	Spain	250
*Pakistan	100	Subquotas:	
Palestine, Arab	100	Fernando Po	
*Philippines	100	Ifni	
Poland	6,488	Rio Muni	
Portugal	438	Spanish Sahara	
Subquotas:		Sudan	100
Angola		Sweden	3,295
Cape Verde Islands		Switzerland	1,698
Guinea, Portuguese		Tanganyika	100
*India, Portuguese		*Thailand	100
*Macao		Togo	100
Mozambique		Tunisia	100
Principe & S. Tome		Turkey	225
*Timor		Union of South Africa	100
Ruanda-Urundi	100	Union of Soviet Socialist	
Rumania	289	Republics	2,697
*Samoa, Western	100	United Arab Republic	100
San Marino	100	Upper Volta	100
Saudi Arabia	100	*Vietnam	100
Senegal	100	Yemen	100
Somali Republic	100	Yugoslavia	942

* Situated in the Asia-Pacific Triangle

CHAPTER 9

RULES OF QUOTA CHARGEABILITY

SECTION.

1. Determination of quota to which an immigrant is chargeable.
 - (a) Rule: Place of birth.
 - (b) First exception: Preserving the family unit—Children.
 - (c) Second exception: Preserving the family unit—Spouse.
 - (d) Third exception: "Missionary Clause"—Alien born in country in which neither of his parents was born or a resident.
 - (e) Fourth exception: Alien born in United States.
 - (f) Fifth exception: Immigrants of Asian ancestry.
2. Quota chargeability of non-Asian persons born within the Asia-Pacific Triangle.
3. Rules of chargeability to subquotas.
 - (a) Rule.
 - (b) Exceptions.

§ 1. Determination of quota to which an immigrant is chargeable.

(a) **Rule: Place of birth.** The quota to which a quota immigrant is chargeable, as a rule, is determined by his place of birth. (Section 202(a) and 22 CFR 42.50) Exceptions to this rule apply (1) in the interest of preserving the family unit in the case of family members born in different countries; (2) in the case of aliens who have no tie to the country of their birth; (3) in the case of aliens born in the United States; and (4) in the case of Asian peoples. These exceptions are discussed below.

The location of the alien's place of birth within a given quota area at the time of visa application determines his quota. The boundaries of a quota area, in most instances, are the present international boundaries. Consequently, the fact that the place of birth may have been part of another country at the time of the alien's birth is immaterial. For example, a quota immigrant born in the Dodecanese Islands who applies in 1960 for a visa is chargeable to the quota of Greece, regardless of the fact that at the time of his birth in 1940 these islands were part of Italy. However, the international boundaries, as of January 1938, are still effective as the boundaries of certain quota areas in parts of Europe since the annexation of one country by another and other territorial changes not recognized *de jure* by the United States do not affect the quota chargeability of an alien. For example, an alien born in Lithuania

is chargeable to the quota of that country inasmuch as the United States has not recognized the annexation of Lithuania by the Soviet Union; an alien born in Upper Silesia is chargeable to the German quota inasmuch as the United States has not recognized the annexation of this part of Germany by Poland. Similarly, the former Free City of Danzig, although under the provisional administration of Poland, is still held to be a separate quota area.¹ The Department of State has published a description of those areas in which there might be doubt concerning the territorial limits for quota purposes. The pertinent portions of this description are reproduced in Appendix F.

Under the rule that place of birth determines the quota chargeability of an alien, his ancestry, citizenship and residence are not relevant factors in the determination of his immigration quota. Thus, a person born in Portugal is chargeable to the quota of that country even if he is of Spanish ancestry, a citizen of France and a resident of England. This rule governs unless one of the following exceptions is applicable.

(b) First exception: Preserving the family unit—Children. An alien child² when accompanied by his alien parent³ or parents may, irrespective of his ancestry, be charged to the quota of either of the accompanying parents if the parent has received, or would be qualified for, an immigrant visa, if necessary to prevent the separation of the child from the accompanying parent or parents, and if the quota to which such parent or parents would be chargeable is not exhausted for that fiscal year. (Section 202(a)(1) and 22 CFR 42.51) Thus, a child born in Greece, if accompanied by a parent born in Great Britain, may be charged to the quota of Great Britain if the Greek quota is oversubscribed. A child may be considered "accompanying" his parents if a visa is issued to the child within four months of the date of visa issuance to the parent. (22 CFR 42.1) This interpretation applies regardless of whether visas are issued to the child and his parent at the same or at different consular offices, or whether the parent, at the time of the issuance of a visa to his child has already been admitted to the United States. In view of the derivative character of his quota chargeability, an immigrant to whom a visa is issued under his parent's quota is not admissible at a port of entry of the United States if he arrives before his parent.

The language of the law permitting a child to be charged to the quota of his accompanying parent "if such parent . . . would

¹ Visa Office Bulletin No. 39, February 9, 1959.

² See ch. 12, § 2(b) for definition of term "child."

³ See ch. 5, § 3(f) for definition of term "parent."

be qualified for an immigrant visa" is interpreted so as to permit an alien child to be charged to the quota of the accompanying parent if the parent has been lawfully admitted to the United States for permanent residence, has gone abroad in order to confer his quota chargeability on his child and returns to the United States without obtaining a visa himself, but seeking admission with a reentry permit or his alien registration card.⁴

(c) **Second exception: Preserving the family unit—Spouse.** An alien chargeable to a different quota from that of his accompanying spouse may be charged to the quota of the accompanying spouse, if necessary to prevent the separation of husband and wife and if the quota to which the accompanying spouse is or would be chargeable is not exhausted for the current fiscal year. For example, the wife born in Greece of an alien born in Great Britain may be charged to the British quota assuming that the British quota is open and the Greek quota oversubscribed. As stated in Section 5(b) below, this rule does not apply if the spouse who is chargeable to an oversubscribed quota is an Asian person. However, a non-Asian spouse chargeable to an oversubscribed quota may be charged to the quota of the accompanying Asian spouse, if the latter quota is open. For example, the non-Asian spouse born in Greece of an Asian alien chargeable to the Asia-Pacific quota may be charged to the Asia-Pacific quota if the Greek quota is oversubscribed and the Asia-Pacific quota current. (Section 202(a)(2) and 22 CFR 42.52)⁵

A husband or wife may be considered "accompanying" his spouse if a visa is issued to such husband or wife within four months of the date of visa issuance to the spouse. (22 CFR 42.1) This interpretation applies regardless of whether visas are issued to the two spouses at the same or at different consular offices or whether one of them, at the time of the issuance of a visa to the other, has already been admitted to the United States. In view of the derivative character of the quota chargeability, an immigrant to whom a visa is issued under the quota of his spouse is not admissible at a port of entry of the United States if he arrives before the spouse from whom quota chargeability is derived.

As in the case of the alien child, the law is interpreted so as to permit an alien to be charged to the quota of the accompanying spouse who has been lawfully admitted to the United States for permanent residence, has gone abroad in order to confer his quota chargeability on his spouse and returns to

⁴ See ch. 44.

⁵ Visa Office Bulletin No. 39, February 9, 1959.

the United States without obtaining a visa himself but seeking admission with a reentry permit or his alien registration card.⁶

(d) **Third exception: "Missionary Clause"—Alien born in country in which neither of his parents was born or a resident.** An alien, if not an Asian person, who was born within any quota area in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth, may be charged to the quota area of either parent. (Section 202(a)(4))⁷

This provision which became part of American immigration law with the enactment of the Immigration and Nationality Act is intended to prevent hardship cases which occurred under previous law which attributed quota immigrants to quota areas although they were born therein solely because their parents were visiting there temporarily or were stationed there under orders of a foreign employer or other superior authority. The provision is sometimes referred to as the "missionary clause" since aliens born to missionary parents are one of the more readily distinguishable groups benefiting from it. Visa regulations implement this provision as follows:

"An alien who is not a Chinese person and who is not otherwise attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific Triangle, who was born in a quota area in which neither of his parents was born or in which neither of his parents had a residence at the time of his birth, may be charged to the quota of either parent as provided in Section 202(a)(4) of the Act. The parents of such an alien shall not be considered as having acquired a residence within the meaning of Section 202(a)(4), if at the time of such alien's birth within the quota area they were merely visiting temporarily or were stationed there under orders or instructions of an employer, principal or superior authority foreign to such quota area in connection with the business or profession of the employer, principal or superior authority." (22 CFR 42.54)

Thus, an alien born in Turkey to a French born mother and a Swiss born father, while his father served in Turkey as a consul of Switzerland, may be charged to either the Swiss or the French quota. Likewise, a quota immigrant born in India of an English born mother and a Swedish born father, while his father served in India as a missionary for an English mission, may be charged to the quota of Great Britain or Sweden. Also, the Department of State has held that an alien born in a quota area in which neither of his parents was born and in which neither of his parents had a residence at the time of his birth, may be classified as a nonquota immigrant if one or both of his parents

⁶ See ch. 44.

⁷ For definition of term "parent" see ch. 5, § 3(f).

were born in a nonquota country of the Western Hemisphere, or were born in the United States without conferring United States citizenship upon him.

The following rulings by the Department of State further illustrate the application of the "missionary clause":

1. An alien who was born in London at the time his father was serving in a high diplomatic position at the Imperial Russian Embassy in London, was held chargeable to the quota of the country of his birth, namely, the quota of Great Britain. It was also held that the alien might benefit from the provisions of Section 202(a)(4), provided his mother was not born in England.

2. In the case of an alien whose father was a Netherlands national sent by his government to the Netherlands East Indies, the Netherlands Government was considered to be a "superior authority" to the Netherlands East Indies within the meaning of the regulations.

3. An alien born in India whose father was sent to India as a missionary by an organization which was foreign to India, was held entitled to the benefits of Section 202(a)(4).

4. An alien born in India whose parents were born in Cuba and neither of whom had a residence in India at the time of the alien's birth, was held to be entitled to classification as a nonquota immigrant under Section 101(a)(27)(C). For the purpose of this case, Cuba was deemed to be a "quota area" within the meaning of Section 202(a)(4). Under the same circumstances, nonquota status may be accorded an alien whose parents were born in the United States but had not conferred on him United States citizenship.

5. An alien born in Paris, France, at a time when her father was serving as Military Attaché to the Cuban Legation in Paris, both parents being Cuban citizens at the time of the child's birth although the mother was born in Puerto Rico when it was under Spanish rule and the father was born in Spain, was held to be entitled, by virtue of the provisions of Section 202(a)(3), to a nonquota immigrant status under Section 101(a)(27)(C). In other words, the alien was accorded the quota chargeability of her mother, a Cuban citizen, who was considered to have been born in the United States. For the purposes of this case, Cuba was deemed to be a "quota area" within the meaning of Section 202(a)(4).

6. In the case of an alien born in India on January 22, 1921, whose parents were born in Ireland and whose father went to India in the Service of the British Army in 1919, but was actually with the Indian Medical Service at the time of the applicant's birth, it was held that if the alien's father had been a member of the British Army stationed in India at the time of the alien's birth, the son may properly have been charged to the quota for Ireland under Section 202(a)(4). However, since the father was engaged by the Indian Medical Service at the time of his son's birth, a determination of the alien's quota chargeability would depend on whether the Indian Medical Service was an integral part of the British Army or of the Indian Municipal Government.

7. An alien born in China whose father, a native of Ireland, was representing a London business firm in China at the time of the alien's

birth, and whose mother, a native of Estonia, had resided in Harbin, China, several years prior to her marriage to the alien's father, was held to be chargeable to the quota for either Ireland or Estonia. The alien's father was considered a nonresident of China and the alien's mother was considered to have acquired her husband's residence upon marriage. Therefore, both parents were nonresidents of China at the time of the alien's birth and the provisions of Section 202(a)(4) were held to be applicable.⁸

(e) **Fourth exception: Alien born in United States.** An alien born in the United States, if not an Asian person, is for purposes of quota chargeability considered born in the country of which he is a citizen or subject, and, if he is not a citizen or subject of any country, he is considered born in the last foreign country in which he had his residence. (Section 202(a)(3) and 22 CFR 42.53)⁹ For example, a person born in the United States who lost his American citizenship by voting in Italian elections is chargeable to the Italian quota if he is a citizen of Italy. On the other hand, if the same person voted in Italian elections without being a citizen of Italy and without acquiring the citizenship of Italy or any other foreign country he is chargeable to the quota of the country of his last foreign residence. If, in our example, the alien's last foreign residence were Great Britain he would be chargeable to the quota of Great Britain; if his last foreign residence were Brazil he would be considered to be a nonquota immigrant.

By analogous interpretation an alien born in a quota country and married to an alien born in the United States who is a citizen of one of the nonquota countries of the Western Hemisphere is entitled to nonquota classification under Sections 101(a)(27)(C) and 202(a)(3) of the Act if accompanying or following to join his spouse. For example, an alien born in Rumania may be classified a nonquota immigrant if he accompanies his alien wife who was born in the United States and has acquired Canadian citizenship.

(f) **Fifth exception: Immigrants of Asian ancestry.** The quota chargeability of aliens of Asian ancestry is determined by rules different from those applicable to other quota immigrants. They are discussed in Chapter 10.

§ 2. Quota chargeability of non-Asian persons born within the Asia-Pacific Triangle.—A person of non-Asian ancestry born within the Asia-Pacific Triangle¹⁰ is chargeable to the quota of the country of his birth unless one of the exceptions to quota

⁸ Visa Office Bulletin No. 23, May 29, 1957.

⁹ For definition of term "United States" see ch. 5, § 1.

¹⁰ For description of the Asia-Pacific Triangle see ch. 10, § 2.

chargeability described in this chapter applies in his case. For example, a person of French parentage born in Japan is chargeable to the Japanese quota; if born in China is chargeable to the quota of China of 100; if born in Hong Kong is chargeable to the subquota of 100 of Hong Kong as described in Section 3 below. However, if this person was born in Japan or in any of the other countries of the Asia-Pacific Triangle in which neither of his parents was born and in which neither of his parents had a residence he may be charged to the quota area of either parent as described in Section 1(d) above.

§ 3. Rules of chargeability to subquotas.

(a) **Rule.** A quota immigrant born in a subquota area,¹¹ as a rule, is chargeable to the subquota of the area of his birth. (22 CFR 42.58) For example, a quota immigrant born in Bermuda is chargeable to the subquota of Bermuda, irrespective of whether he is of British, French, or native parentage.

(b) **Exceptions.** The following exceptions apply:

(1) The quota chargeability of an Asian person born in a subquota area is governed by the rules applicable to Asian persons. (22 CFR 42.58)¹²

(2) A quota immigrant, not an Asian person, who was born in a subquota area may be charged to the quota of the governing country irrespective of subquota limitations, or to the quota of another quota or subquota area if his case falls within one of the exceptions to the general rule of quota chargeability. (22 CFR 42.58)¹³

In other words, the exceptions to the rule of quota chargeability have analogous application to the rule of subquota chargeability. For example, a child born in Malta which under the general rule would be chargeable to the Maltese subquota of 100 of the quota of Great Britain may be charged to the British quota if he is accompanied by a native born British parent and if the subquota of Malta is unavailable. Likewise, a husband born in Mauritius, chargeable under the general rule to the subquota of 100 of Mauritius, may be charged to the subquota of Trinidad if his wife is chargeable to this subquota and if the subquota of Mauritius is unavailable. Also, an adult quota immigrant born in Hong Kong when his parents were stationed there as missionaries of a German missionary organization may be charged to the quota of either parent under the provisions of the "missionary clause."¹⁴

¹¹ See ch. 8, § 3.

¹² See ch. 10.

¹³ See § 1(b) through (e), *supra*.

¹⁴ See § 1(d), *supra*.

CHAPTER 10

IMMIGRATION OF ASIANS

SECTION.

1. History.
2. The Asia-Pacific Triangle.
3. Rules concerning nonquota classification of Asians.
4. Rules concerning Asian persons who are quota immigrants.
 - (a) Special rules for Chinese persons.
 - (b) Birth within Asia-Pacific Triangle.
 - (c) Birth outside the Asia-Pacific Triangle.
5. Certain rules of quota chargeability inapplicable to Asian persons.
 - (a) Children.
 - (b) Spouse.
 - (c) "Missionary clause."
 - (d) Alien born in United States.
6. Steps in determining quota chargeability of Asians.
 - (a) Determination whether applicant is of Asian ancestry.
 - (b) Chinese persons.
 - (c) Asian persons, other than Chinese, born within the Asia-Pacific Triangle.
 - (d) Asian persons, other than Chinese, born outside of the Asia-Pacific Triangle.
 - (e) Asian persons entitled to derivative quota chargeability.

§ 1. **History.**—Before the Immigration and Nationality Act became operative on December 24, 1952, the immigration of persons of Asian ancestry was severely restricted by the Immigration Act of February 5, 1917 and by the Immigration Act of 1924. The Immigration Act of February 5, 1917, provided that, with few exceptions, natives of the so-called Asiatic Barred Zone could not enter the United States as immigrants.¹ The Immigration Act of 1924 made ineligible for immigration persons who under the nationality laws were barred from naturalization.² The Nationality Act of 1940, as amended, extended the right to become a naturalized citizen only to white persons, persons of African nativity or descent, the

¹ See also ch. 1 on the history of the admission of Asians. Section 3 of the 1917 Act defined the Asiatic Barred Zone as "islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south," and . . . "any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north . . ." (39 Stat. 876).

² See § 13(c) (43 Stat. 161).

descendants of races indigenous to the Western Hemisphere, chiefly American Indians and Eskimos, Chinese persons and persons of races indigenous to India and to Filipinos.³ Thus, the Immigration Act of 1924 barred from immigration Koreans, Japanese, Siamese, and certain other Asian peoples.

The Immigration and Nationality Act makes all persons, regardless of their race or ancestry, eligible for naturalization and for immigration. It differentiates between Asian immigrants and immigrants of other stock in that the quota chargeability of persons of Asian ancestry born outside of Asia is determined by their ancestry while the quota chargeability of non-Asian immigrants is, as a rule, determined by the place of their birth. In following this formula of quota chargeability, first set up in the 1943 Act in regard to Chinese persons, the Immigration and Nationality Act has made some significant exceptions. While under the Act of 1943 regarding Chinese, and under the Act of 1946 regarding East Indians, the Chinese husband and child of an American citizen and the East Indian husband, wife or child of an American citizen could enter the United States only as quota immigrants, the Immigration and Nationality Act accords nonquota status to any child, wife and husband of an American citizen, regardless of their ancestry or race. The significance of this liberalization is illustrated by the fact that during the five-year period from 1955 through 1959, of a total of 44,327 immigrants admitted from China, Japan and the Philippines, 3,810 were quota immigrants while 40,517 entered as nonquota wives, husbands and children of American citizens.⁴

§ 2. The Asia-Pacific Triangle.—The Immigration and Nationality Act sets up, for quota purposes, a geographical area called the Asia-Pacific Triangle which comprises all quota areas and colonies and other dependent areas situated wholly within the triangle bounded by the meridians 60 degrees east and 165 degrees west longitude and by the parallel 25 degrees south latitude—roughly, all Asian countries from India to Japan and all Pacific Islands north of Australia and New Zealand. (Section 202(b))

Separate minimum quotas of 100 each are established for the following quota areas situated within the Asia-Pacific Triangle: Afghanistan, Bhutan, Burma, Cambodia, Ceylon, China, India, Indonesia, Korea, Laos, Malaya, Nauru, Nepal, New Guinea, Pacific Islands, Pakistan, Philippines, West Samoa,

³ See § 303 (54 Stat. 1140).

⁴ See also ch. 2, § 3.



ASIA-PACIFIC TRIANGLE *

Thailand (Siam), and Vietnam. In addition there is established a separate Asia-Pacific quota of 100, a quota for Chinese persons of 105, and a quota of 185 for Japan.

§ 3. Rules concerning nonquota classification of Asians.—The general rules which determine whether an immigrant may be classified as a nonquota immigrant⁵ apply to Asian persons with two exceptions:

- (a) An alien who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-

* From Immigration Quota Areas According to the Immigration and Nationality Act of the United States, Washington, 1960.

⁵ See ch. 7.

Pacific Triangle—here referred to as an Asian person—does not acquire nonquota status due to the fact of his birth in a nonquota country of the Western Hemisphere. (Sections 202(a)(5) and 101(a)(27)(C)) Therefore, a person who by ancestry is a Chinese person or a Japanese person is classifiable as a quota immigrant regardless of the fact that he was born in Brazil;

(b) An Asian person who is married to a non-Asian native of a nonquota country of the Western Hemisphere does not derive nonquota status if accompanying or following to join such spouse. (Sections 202(a)(5) and 101(a)(27)(C)) For example, the Chinese wife of a Cuban husband who wishes to immigrate with him is a quota immigrant while her husband is a nonquota immigrant. In the case of non-Asian immigrants, the spouse who is a quota immigrant derives nonquota status from a spouse born in a nonquota country of the Western Hemisphere.⁶

As stated already, all other rules concerning nonquota classification apply equally to Asians and non-Asians. It should be particularly noted that the Asian child who is accompanying or following to join a parent who is entitled to nonquota status being non-Asian and having been born in a nonquota country of the Western Hemisphere is himself entitled to nonquota status, irrespective of race or place of birth. For example, a child born in Hong Kong of a Chinese mother is classifiable as a nonquota immigrant if accompanying or following to join his father who is classifiable as a nonquota immigrant being non-Asian and having been born in Brazil.

§ 4. Rules concerning Asian persons who are quota immigrants.—The rules concerning the allocation of immigrant visas within the various quotas, i.e., to preference and nonpreference quota immigrants,⁷ apply equally to all persons regardless of ancestry and race.

The most significant differentiation between Asian quota immigrants and non-Asian quota immigrants relates to the rules of quota chargeability.

(a) **Special rules for Chinese persons.** A Chinese person, i.e., an alien who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to China is, regardless of his place of birth, chargeable to the Chinese quota of

⁶ See ch. 7, § 4.

⁷ See ch. 11.

105.⁸ This rule applies regardless of whether such person was born inside or outside the Asia-Pacific Triangle. For example, an alien whose father was British and his mother Chinese is chargeable to the Chinese quota of 105 whether he was born in China, Japan, Brazil, or Great Britain. (Section 201(a) and 22 CFR 42.56)

As described in Section 5 below, a Chinese person may be charged to a quota other than the Chinese quota if he is a child and derives quota chargeability from an accompanying parent.

(b) Birth within Asia-Pacific Triangle.

(1) An Asian immigrant born within a separate quota area situate wholly *within* the Asia-Pacific Triangle is chargeable to the quota for the separate quota area in which he was born. This is the same rule which applies in the case of non-Asian aliens. For example, a person of Japanese ancestry born in China is chargeable to the quota of China; and a person of Korean ancestry born in Japan is chargeable to the quota of Japan. (Section 202(b)(2))

(2) An Asian immigrant born within a colony or other dependent area situate wholly *within* the Asia-Pacific Triangle is chargeable to the Asia-Pacific quota of 100. For example, a Japanese immigrant born in Hong Kong is chargeable to the Asia-Pacific quota, and not to the subquota of Hong Kong. (Section 202(b)(3))

(c) Birth outside the Asia-Pacific Triangle.

(1) An Asian immigrant born *outside* the Asia-Pacific Triangle who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to not more than one separate quota area situate wholly within the Asia-Pacific Triangle is chargeable to the quota of that quota area. For example, an immigrant born in Holland of a French mother and a Japanese father is chargeable to the quota of Japan; and an immigrant born in Argentina of Korean parents is chargeable to the quota of Korea. (Section 202(b)(4))

(2) An immigrant born *outside* the Asia-Pacific Triangle who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to *one or more* colonial or other dependent areas situate wholly within the Asia-Pacific Triangle is chargeable to the Asia-Pacific quota. For example, an im-

⁸ The quota for China of 100 is available to persons born in China of non-Asian or Asian ancestry, but not to Chinese persons.

migrant born in Australia of Melanesian stock is chargeable to the Asia-Pacific quota of 100. (Section 202(b)(5))

(3) An immigrant born *outside* the Asia-Pacific Triangle who is attributable by as much as one-half of his ancestry to peoples indigenous to two or more separate quota areas situate wholly within the Asia-Pacific Triangle or to a quota area or areas and one or more colonies and other dependent areas situate wholly therein is chargeable to the Asia-Pacific quota. For example, an immigrant born in Italy of a Malayan father and a Korean mother is chargeable to the Asia-Pacific quota. (Section 202(b)(6))

§ 5. Certain rules of quota chargeability inapplicable to Asian persons.—Of the exceptions to the rule of quota chargeability,⁹ only the one relating to a child accompanying his parent or parents applies to Asian persons.

(a) **Children.** If the Asian applicant is a child accompanying his parent or parents he can derive quota chargeability from his parent irrespective of the parent's ancestry, if necessary to prevent the separation of the family. (Section 202(a)(1) and (5)) For example, a child born in India and accompanying an Asian father chargeable to the Korean quota and a mother chargeable to the German quota, is primarily chargeable to the Indian quota but may be charged to the quota of either parent if a quota number is available under the Korean or German quota but not under the Indian quota; a child born in England to a father chargeable to the Chinese quota, and a mother chargeable to the Japanese quota, is primarily chargeable to the Chinese quota, being a Chinese person as described above, but may be charged to the Japanese quota if accompanying his mother, if a quota number is available under the Japanese quota but not under the Chinese quota, the rule of Section 202(a)(1) taking precedence over that applying to Chinese persons. Similarly, if in the previous example the mother were non-Asian and chargeable to the British quota, the child, in spite of his being a Chinese person, could be charged to the British quota, if necessary to prevent the separation of child and mother.

(b) **Spouse.** An Asian spouse may not be charged to the more favorable quota of his accompanying spouse, regardless of whether such spouse is chargeable to a quota of the Asia-Pacific Triangle or to another quota. (Section 202(a)(5)) For example, the Indian wife born in Great Britain of a husband chargeable to the Korean quota is chargeable to the Indian

⁹ See ch. 9, § 1.

quota and may not be charged to her husband's quota even if the Indian quota is oversubscribed and the Korean quota open.

(c) **"Missionary clause."** An Asian person, born within any quota area in which neither of his parents was born and in which neither of his parents had a residence at the time of his birth, may not be charged to the quota area of either parent but must be charged to the appropriate Asia-Pacific Triangle quota. (Section 202(a)(5)) For example, an applicant born in India of parents of Korean ancestry is chargeable to the Indian quota and may not be charged to the Korean quota although at the time of his birth his parents were merely visiting in India and were neither residents nor nationals of that country.

(d) **Alien born in United States.** An Asian person born in the United States who is an alien may not be considered as having been born in the country of which he is a citizen or subject, or if he is not a citizen or subject of any country, he may not be considered born in the last foreign country in which he had his residence; he is chargeable to the appropriate Asia-Pacific Triangle quota. (Section 202(a)(5)) For example, an alien born in the United States of Japanese parents who lost his American citizenship by voting in Japanese elections and who applies for an immigrant visa is chargeable to the quota of Japan.

§ 6. Steps in determining quota chargeability of Asians.—In applying the rules of quota chargeability described above to the individual case of an Asian person the following steps may be followed:

(a) **Determination whether applicant is of Asian ancestry.** If the applicant is of as much as fifty per cent Asian ancestry the special rules applicable to Asians come into operation.

(b) **Chinese persons.** If the Asian applicant is a Chinese person, i.e., if he is of as much as fifty per cent Chinese ancestry he is, irrespective of place of birth, chargeable to the Chinese quota of 105, unless he falls within the exception listed below under (e).

(c) **Asian persons, other than Chinese, born within the Asia-Pacific Triangle.** If the applicant is an Asian person, other than a Chinese person, it has to be determined whether his place of birth is within or outside the Asia-Pacific Triangle. If born within the Asia-Pacific Triangle in a country which is a quota area with its own quota the applicant is chargeable to the quota of this quota area. If born within the Asia-Pacific Triangle in an area without a quota of its own the applicant is

chargeable to the Asia-Pacific quota of 100. For example, a person of Indian ancestry born in Korea is chargeable to the Korean quota; a person of Indian ancestry born in Hong Kong is chargeable to the Asia-Pacific quota of 100.

(d) Asian persons, other than Chinese, born outside of the Asia-Pacific Triangle. If the applicant is an Asian person, other than a Chinese person, and was born outside of the Asia-Pacific Triangle, he is chargeable to the quota of his ancestry if he is attributable by ancestry to one quota area within the Triangle; and to the Asia-Pacific quota of 100, if attributable to more than one quota area or to one or more colonies or dependent areas within the Triangle. For example, an applicant of Japanese ancestry born in England is chargeable to the Japanese quota; an applicant of Korean ancestry born in Brazil is chargeable to the Korean quota; an applicant born in England who is of half Korean and half Indian ancestry is chargeable to the Asia-Pacific quota; an applicant born in England who is of Melanesian ancestry is chargeable to the Asia-Pacific quota.

(e) Asian persons entitled to derivative quota chargeability. If the Asian applicant is a child accompanying a parent, he may be charged to the quota of the accompanying parent, if necessary to prevent the separation of the child from the parent. For example, a child accompanying a father of British ancestry born in England and a mother of Chinese ancestry, is primarily chargeable to the Chinese quota, but may be charged to the quota of Great Britain if the Chinese quota is over-subscribed and the British quota open.

CHAPTER 11

ALLOCATION OF IMMIGRANT VISAS WITHIN EACH QUOTA—QUOTA PREFERENCES

SECTION.

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§ 1. Background and summary.—Since the establishment of quotas in American immigration law the statutes have provided certain preferences within each quota. The first Quota Act simply prescribed that “in the enforcement of this Act preference shall be given so far as possible to the wives, parents,

brothers, sisters, children under eighteen years of age, and fiancées" of citizens of the United States and of aliens in the United States who have applied for citizenship.¹ The Immigration Act of 1924, as amended, was more specific in according preferences within each quota. It provided that the first fifty per cent of each quota was available to parents of United States citizens, to husbands of United States citizens by reason of marriage occurring on or after January 1, 1948² and, under quotas of 300 or more, to skilled agriculturists; the second fifty per cent of each quota was available to the wives and unmarried children of aliens lawfully admitted for permanent residence; any portion of the quota not used for the two preference categories was available to nonpreference quota immigrants.³

The Immigration and Nationality Act, as first enacted in 1952, introduced a greater degree of selectivity into the method of allocating the quota numbers within each quota based on the need for the services of immigrants in the United States. At the same time, consistent with the Congressional policy of maintaining the family unit wherever possible, the law made more refined provisions for the preferential treatment of close relatives of United States citizens and alien residents.⁴ The act accorded first preference to skilled aliens needed in the United States, their spouses and children, with a first call on fifty per cent of each quota; second preference to parents of United States citizens with a first call on thirty per cent of each quota; and third preference to spouses and children of permanent resident aliens with a first call on twenty per cent of each quota. Any portion of the quota not used by a given preference category was first made available to any of the other preference groups. Quota numbers not used by any of the preference groups were available to any other applicants for immigrant visas, the so-called nonpreference group, with a priority of twenty-five per cent for brothers, sisters, sons and daughters of United States citizens.⁵

Prompted by the finding of the House Judiciary Committee that "... the recognized principle of avoiding separation of families could be furthered if certain categories of such relatives were reclassified in the various preference portions of the immi-

¹ Section 2(d) of the Act of May 19, 1921 (42 Stat. 5).

² Husbands of United States citizens who were married before January 1, 1948 were entitled to nonquota status.

³ Section 6 of the Act of May 26, 1924 (43 Stat. 153).

⁴ House Report No. 1365, 82nd Congress, Second Session, pp. 38 and 39.

⁵ Section 203(a) (66 Stat. 178, 179).

gration quotas," Congress recast the quota preferences with the enactment of the Act of September 22, 1959.⁶

As amended by this measure, the provisions of the Immigration and Nationality Act allocate immigrant visas within each quota as follows:

First preference is accorded to skilled aliens needed in the United States, their spouses and children, with a first call on fifty per cent of each quota;

Second preference is accorded to parents and unmarried sons and daughters of United States citizens with a first call on thirty per cent of each quota;

Third preference is accorded to spouses and unmarried sons and daughters of permanent resident aliens with a first call on twenty per cent of each quota;

Fourth preference is accorded to brothers, sisters and married sons and daughters of United States citizens and their spouses and children, if accompanying them, with a first call on fifty per cent of the portion of each quota not used by the first three preference groups;

Any portion not used by the four preference groups is available to nonpreference quota immigrants. Any portion of a quota not used by one of the first three preference groups is first offered to any of the other preference groups before it becomes available to the fourth preference category or applicants for nonpreference quota visas.

The quota preferences and priorities as recast by the Act of September 22, 1959 do not increase the sum total of quota numbers available to relatives under each quota.⁷

§ 2. First preference—Selected immigrants.

(a) **Definition.** The first fifty per cent of the quota of each quota area and any portion of a quota not required for the issuance of visas to the second and third preference classes are made available for the issuance of visas to otherwise qualified immigrants "whose services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants and to be substantially

⁶ 73 Stat. 644.

⁷ For a fuller discussion of the significance of the changes brought about by the Act of September 22, 1959, see Averbach, "Immigration Legislation 1959," *Department of State Bulletin* of October 24, 1959, pp. 600 to 606, reprinted in part in "Special Supplement 1959" to *Immigration Laws of the United States*, First Edition.

beneficial prospectively to the national economy, cultural interests, or welfare of the United States." (Section 203(a)(1)(A))

The spouse and children⁸ of a selected immigrant are entitled to first preference quota status if they are accompanying or following to join him. (Section 203(a)(1)(B), as amended by the Act of September 11, 1957)⁹ A wife acquired by an alien admitted as first preference quota immigrant upon his return visit to his native country is not entitled to first preference quota status as a spouse following to join a first preference quota immigrant but only to third preference quota status as the spouse of a permanent resident alien.¹⁰

(b) Interpretation. A series of precedent-making decisions has been rendered by the Board of Immigration Appeals, the Central Office and Regional Commissioners of the Immigration and Naturalization Service, illustrating the generally broad interpretation given to the provision authorizing the granting of first preference quota status. Listed below are some of the general rules deduced from these decisions, followed by decisions dealing with specific skills and occupations:

(1) **Sole corporation owner as beneficiary.** An alien who is the sole owner of a bona fide corporation may qualify as beneficiary of a first preference petition filed by his corporation.¹¹

(2) **Personal friendship no hindrance.** If the petitioner and beneficiary of a first preference petition meet the requirements of the statute otherwise, their personal friendship or the petitioner's desire to aid the beneficiary to migrate to the United States are not a basis for the denial of the petition.¹²

(3) **Indefinite employment not a prerequisite.** There is no statutory requirement that the beneficiary of a first preference petition remain indefinitely or for any particular period of time, in the employ of the petitioner.¹³

(4) **Unlimited employment not a prerequisite.** The beneficiary must intend to reside permanently in the United States. However, he is not required to have the intent to remain permanently in the peti-

⁸ For a definition of the term "spouse" see ch. 5, § 3(e); for a definition of the term "child" see ch. 12, § 2(b).

⁹ Prior to the Act of September 11, 1957 the spouse and children were entitled to first preference quota status only if accompanying the principal alien.

¹⁰ BIA, *In the Matter of G.*, 7, I. & N. Dec. 731, June 24, 1958; for different interpretation in case of spouse of Western Hemisphere native see ch. 7, § 4(b)(3).

¹¹ BIA, *In the Matter of M.*, Interim Decision 952, August 27, 1958, approved by Attorney General, September 5, 1958.

¹² Regional Commissioner, *In the Matter of D.C.M.I.*, 7, I. & N. Dec. 632, December 18, 1957, approved by Assistant Commissioner.

¹³ Regional Commissioner, *In the Matter of Pan-American World Airways, Inc.*, 7, I. & N. Dec. 634, December 24, 1957, approved by Assistant Commissioner.

tioner's employ. The petitioner is not required to continue the beneficiary's employment indefinitely.¹⁴

(5) **National interest—Small business.** The success of small businesses is regarded as being in the national interest, and the importation of skilled workers for employment in such enterprises as the garment-reweaving business which constitutes but a small segment of the business of the United States is considered to be substantially beneficial prospectively to the national economy.¹⁵

(6) **Specialized experience.** Specialized experience means much more than the ability to perform rudimentary tasks in an occupation that requires no skill or, at best, is only semi-skilled. It can be acquired only by long and diligent work in an all-around capacity in a skilled occupation.¹⁶

(7) **Shortage of labor not decisive.** The law does not contemplate that every alien whose services are needed in the United States or would be beneficial to the United States should be entitled to first preference. The important consideration in the statute is that first preference should be available to aliens whose services are needed because of their *high education, technical training, specialized experience or exceptional ability*. The law does not require so much that a *particular alien* must be needed in the United States as that the *skill or ability* of an alien must be needed to perform services in this country which will be beneficial here. Therefore, domestic workers or general handymen without special skills do not meet the requirements of the statute even though there is a shortage of this type of help in the United States.¹⁷

(8) **Superior skills not required.** The statute does not require that the skill of a first preference quota immigrant must be superior to that possessed by most others in the occupation. The law contemplates no more than that the applicant possess the skill necessary to perform the tasks of the skilled occupation.¹⁸

(9) **Urgent need.** There is no urgent need within the contemplation of the statute to import aliens to render services here, if workers already in this country may be trained to perform such services within two to six months.¹⁹

(10) **Cultural interests of the United States.** Since the shearing of lindens and other trees requires specialized experience and since there are very few gardeners trained in the United States in methods used on European estates in maintaining trees pruned to various forms, an alien who has been employed in this work abroad for several years was considered entitled to first preference quota status. His services

¹⁴ Regional Commissioner, *In the Matter of D.C.M.I.*, 7, I. & N. Dec. 632, December 18, 1957, approved by Assistant Commissioner.

¹⁵ Central Office, *In the Matter of H.R.S.*, 5, I. & N. Dec. 527, November 18, 1953.

¹⁶ Regional Commissioner, *In the Matter of D.S.*, 7, I. & N. Dec. 93, December 8, 1955.

¹⁷ Central Office, *In the Matter of I. et al.*, 7, I. & N. Dec. 292, July 31, 1956.

¹⁸ Central Office, *In the Matter of Z.*, 7, I. & N. Dec. 283, July 27, 1956.

¹⁹ Regional Commissioner, *In the Matter of P.B.S.C.*, 7, I. & N. Dec. 292, July 31, 1956; see also Regional Commissioner, *In the Matter of C.*, Interim Decision 1056, March 7, 1960.

were held to be needed urgently in the United States and substantially beneficial prospectively to the cultural interests of the United States.²⁰

(11) **Automotive equipment, repair and maintenance man.** An individual who has had many years of comprehensive and well-rounded experience in the repair and maintenance of heavy automotive equipment is entitled to first preference quota status when the work to be performed by him in the United States will be maintenance and repair of equipment consisting of tractors, trailers, trucks, automobiles, etc., in connection with the manufacture and delivery of poultry and live-stock feeds.²¹

(12) **Baker.** An individual with more than twenty years experience in the bakery business, both as craftsman and as proprietor and manager, specializing in the production of Viennese-type cookies, cakes, pastries and fancy cakes for special occasions was held to have the "specialized experience" required for preference quota status.²²

(13) **Cabinet maker.** An alien who served for two years as a carpenter apprentice and subsequently worked for five years on a full-time basis as a cabinet maker-ebonist and had been qualified for making household and office furniture and etching on ebony-wood for one year was considered qualified for first preference quota status since he was to be employed in the United States by a building contractor as a skilled cabinet maker for fine cabinet work on interiors and exteriors.²³

(14) **Domestic workers and handymen.** See above under (7).

(15) **Farmhand.** An individual who had worked as a farmhand and tractor driver but had no experience in raising the principal crop of the farm on which he was to be employed and who was not a trained mechanic was not held to be entitled to first preference quota status.²⁴

(16) **Linguist.** A skilled linguist who has been offered employment in the United States as a French teacher at a girls' boarding school is eligible for first preference quota status. Notwithstanding her lack of prior teaching experience, she was deemed qualified in view of her educational level and her exceptional ability as linguist.²⁵

(17) **Movie actress, potential.** First preference quota status was accorded an alien a motion picture producing corporation was training as a potential actress. This action was based on the opinion of the vice president of the corporation who was an expert in the selection and casting of actors that she possessed abilities and talents which would qualify her as a motion picture actress. She was therefore found to possess "exceptional ability" within the meaning of the statute, even though she had no experience whatsoever.²⁶

(18) **Nurse.** A nurse, licensed in England, who will be employed in a New York hospital, is eligible for first preference quota status

²⁰ Central Office, *In the Matter of I.E.F.*, 5, I. & N. Dec. 529, November 18, 1958.

²¹ Central Office, *In the Matter of G.F.*, 7, I. & N. Dec. 290, July 31, 1956; see also Central Office, *In the Matter of R.G.F.C.*, 5, I. & N. Dec. 321, July 6, 1953.

²² Central Office, *In the Matter of Z.*, 7, I. & N. Dec. 283, July 27, 1956.

²³ Regional Commissioner, *In the Matter of D.S.*, 7, I. & N. Dec. 93, December 8, 1955.

²⁴ Central Office, *In the Matter of G.*, 5, I. & N. Dec. 341, July 21, 1953.

²⁵ Regional Commissioner, *In the Matter of G.F.S.*, 7, I. & N. Dec. 37, May 17, 1955.

²⁶ Central Office, *In the Matter of T.C. F.F.C.*, 5, I. & N. Dec. 454, September 16, 1953.

even though, under New York law, she can not obtain a permanent license to practice nursing until after she files a declaration of intention to become a citizen and passes a State examination.²⁷

(19) **Physician.** A foreign physician coming to intern at a California hospital is not eligible for first preference quota status when neither he nor the petitioning hospital has complied with State medical requirements for the qualification and training of interns.²⁸

(20) **Tailor.** First preference quota status will be accorded a tailor with a minimum of five years' actual working experience in the performance of (1) all the hand sewing operations necessary to a man's suit or overcoat, or (2) all the machine sewing operations necessary to make a man's suit or overcoat, or (3) all the operations by hand-sewing or machine-sewing necessary to make a man's suit or overcoat. Certification by recognized representatives of industry and labor that a particular beneficiary meets their jointly agreed qualification standards as a skilled tailor as set forth here, will be accepted as sufficient to establish these qualifications.²⁹

A tailor who had conducted a tailor and designer shop for men in Italy for more than twenty years and was described as being "specialized in high degree of instruction and technical experience in hand workmanship" was held to possess specialized experience of a nature to justify the approval of first preference quota status since he would be employed by a tailoring firm in the United States which intended to employ him on occupational uniforms as well as civilian clothing requiring expert tailoring experience.³⁰

An alien who has the qualifications of a "skilled tailor" is entitled to first preference quota status when his prospective employment in the United States will be as an alterer of ready-to-wear clothing since his employment will require him to remake practically every part of a man's suit or overcoat.³¹

(c) **Procedure.** A consular officer is authorized to classify a selected immigrant as a first preference quota immigrant only upon the basis of an appropriate petition approved by the Attorney General.³² (Section 204 and 22 CFR 42.30(a))

No petition is required in the case of the spouse and children accompanying or following to join a selected alien. (22 CFR 42.30(b)) Their eligibility to first preference quota classification is established by the consular officer. The spouse and child of a selected immigrant may be considered "accompanying him" regardless of whether visas are issued to the selected alien and his spouse or child at the same or at different consular of-

²⁷ Central Office, *In the Matter of L.H.*, 7, I. & N. Dec. 430, March 11, 1957.

²⁸ Acting Regional Commissioner, *In the Matter of S.A.C.H.I.*, Interim Decision 964, November 18, 1958.

²⁹ Central Office, *In the Matter of B.S., Inc.*, 7, I. & N. Dec. 423, March 4, 1957.

³⁰ Central Office, *In the Matter of W. & B.*, 7, I. & N. Dec. 277, July 20, 1956.

³¹ Assistant Commissioner, *In the Matter of De N.*, Interim Decision 1041, December 21, 1959.

³² See ch. 16, § 7.

fices. In view of the derivative character of his quota status, an immigrant to whom a first preference quota visa is issued as the accompanying spouse or child of a selected immigrant is not admissible as such at a port of entry of the United States if he arrives before the selected immigrant. Once the selected immigrant has been admitted to the United States his spouse and child applying for a visa are entitled to first preference quota status as following to join him, irrespective of the time which has elapsed since he was issued a visa or admitted into the United States.

An immigrant visa issued to a selected immigrant is identified by the symbol "T-1." A visa issued to his spouse or child is identified by the symbol "T-2" and "T-3," respectively. (22 CFR 42.12(b))

§ 3. Second preference—Parents, unmarried sons and daughters of American citizens.

(a) **Definition.** Thirty per cent of the quota of each quota area and any portion of a quota not required for issuance of visas to first and third preference quota immigrants are made available to qualified quota immigrants who are:

- (1) the parents³³ of American citizens;
- (2) the unmarried sons³⁴ of American citizens; or
- (3) the unmarried daughters³⁵ of American citizens.

(Section 203(a) (2), as amended)

An American citizen, in order to confer second preference status upon a parent, must be at least twenty-one years of age; and in order to confer second preference status upon an unmarried son or daughter, he must be a "parent" as that term is defined. (Sections 203(a) (2) and 205, as amended, and 22 CFR 42.31)

The requirement that a son or daughter is "unmarried" is met if the individual is not married at the time of visa issuance and application for admission to the United States, irrespective of whether or not he or she was previously married. (Section 101(a) (39)) For example, the married daughter of an American citizen becomes eligible for second preference quota status upon the termination of her marriage, whether through the death of her husband or by annulment or divorce.

³³ See ch. 5, § 3(f) for definition of term "parent."

³⁴ See ch. 12, § 2(c) for definition of term "son."

³⁵ See ch. 12, § 2(c) for definition of term "daughter."

There is no preference or priority within the second preference portion of each quota between parents on one hand and unmarried sons and daughters on the other hand. These groups compete for available quota numbers strictly on the basis of the priority of their registration.³⁶

(b) Procedure. An alien may be classified as a second preference quota immigrant only upon the basis of an appropriate petition approved by the Attorney General.³⁷ (Section 205)

An immigrant visa issued to the parent of an American citizen is identified by the symbol "U-1." A visa issued to the unmarried son or daughter of an American citizen is identified by the symbol "U-2." (22 CFR 42.12(b))

§ 4. Third preference—Spouses and unmarried sons and daughters of permanent resident aliens.

(a) Definition. Twenty per cent of the quota of each quota area and any portion of a quota not required for issuance of visas to first and second preference quota immigrants are made available to qualified quota immigrants who are:

- (1) the spouses;³⁸
- (2) the unmarried sons;³⁹ or
- (3) the unmarried daughters⁴⁰

of aliens lawfully admitted for permanent residence. (Section 203(a)(3), as amended)

A lawful permanent resident, in order to confer third preference quota status upon an unmarried son or daughter, must be a "parent" as that term is defined. (Sections 203(a)(3), as amended, 205, and 22 CFR 42.32)

The requirement that a son or daughter is "unmarried" is met if the individual is not married at the time of visa issuance and application for admission to the United States, irrespective of whether or not he or she was previously married. (Section 101(a)(39)) For example, the married daughter of a permanent resident alien becomes eligible for third preference quota status upon the termination of her marriage, whether through the death of her husband or by annulment or divorce.

³⁶ See ch. 14, § 3(c).

³⁷ See ch. 16, § 8.

³⁸ See ch. 5, § 3(e) for definition of term "spouse."

³⁹ See ch. 12, § 2(c) for definition of term "son."

⁴⁰ See ch. 12, § 2(c) for definition of term "daughter."

The children of a parent who is a national but not a citizen of the United States are held eligible for third preference quota status.⁴¹

There is no preference or priority within the third preference portion of each quota between spouses on one hand and unmarried sons and daughters on the other hand. These groups compete for available quota numbers strictly on the basis of the priority of their registration.⁴²

(b) **Procedure.** An alien may be classified as a third preference quota immigrant only upon the basis of an appropriate petition approved by the Attorney General.⁴³ (Section 205)

An immigrant visa issued to the spouse of a permanent resident alien is identified by the symbol "V-1." A visa issued to an unmarried son or daughter of a permanent resident alien is identified by the symbol "V-2." (22 CFR 42.12(b))

§ 5. Fourth preference—Brothers, sisters, and married sons and daughters of American citizens, their spouses and children.

(a) **Definition.** Fifty per cent of any portion of a quota not required for visa issuance to first, second or third preference quota immigrants is made available to:

- (1) brothers ⁴⁴ of American citizens;
- (2) sisters ⁴⁵ of American citizens;
- (3) married sons ⁴⁶ of American citizens;

⁴¹ BIA, *In the Matter of B.*, 6, I. & N. Dec. 555, April 7, 1955.

⁴² See ch. 14, § 3(c).

⁴³ See ch. 16, § 8.

⁴⁴ The terms "brother" and "sister" are not statutorily defined. Brothers and sisters of the half-blood (that is, brothers who have the same father but different mothers or the same mother but different fathers) are "brothers" and "sisters" in contemplation of law. (12 *Corpus Juris Secundum*, 373; see also BIA, *In the Matter of Def.*, 6, I. & N. Dec. 325, September 21, 1954) However, the relationship of half-brother does not exist for immigration purposes between a legitimate and an illegitimate son or daughter of the same father born to different women, only one of whom is or was married to the father, since an illegitimate child draws no benefits under the immigration laws on the basis of its relationship to its father. (BIA, *In the Matter of C.*, 5, I. & N. Dec. 610, January 13, 1954) A legitimate and an illegitimate offspring of a common mother and different fathers, and two illegitimate offspring of a common mother and different fathers are considered half-brothers and half-sisters, and therefore "brothers" and "sisters" in contemplation of law. (BIA, *In the Matter of C.*, 6, I. & N. Dec. 786, November 3, 1955) Brothers and sisters born out of wedlock and legitimated by the subsequent marriage of their parents are "brothers" and "sisters" even though legitimation did not occur until after they had reached majority. (BIA, *In the Matter of C.*, 6, I. & N. Dec. 617, May 23, 1955) Brothers and sisters through adoption are not "brothers" and "sisters" in contemplation of the immigration law. (BIA, *In the Matter of M.*, 6, I. & N. Dec. 180, June 23, 1954)

⁴⁵ See footnote 44, *supra*.

⁴⁶ See ch. 12, § 2(c) for definition of term "son."

(4) married daughters⁴⁷ of American citizens; and

(5) the spouses⁴⁸ and children⁴⁹ of aliens listed under (1) through (4) if accompanying them.

(Section 203(a)(4), as amended)

An American citizen of any age may confer fourth preference quota status upon a brother or sister. (22 CFR 42.33(a)) Therefore, the Immigration and Naturalization Service approves a petition filed by an American citizen petitioner on behalf of his brother or sister although he is under twenty-one years of age. A person or guardian may file a petition on behalf of a son, daughter, or ward under fourteen years of age. (8 CFR 10.1)

(b) **Scope.** While the preference portion of each quota for the first, second and third preference quota immigrant classes are absolute in that the respective percentage of each quota is first offered to each of these classes, the preference of the fourth preference class is relative as it becomes available only if the quota is not entirely absorbed by the demand of immigrants classified as first, second or third preference quota immigrants. Furthermore, it should be noted that the fourth preference class is entitled only to fifty per cent of the portion of a quota not used by the first three preference quota immigrant classes while the remaining fifty per cent, as described below, become available to nonpreference quota immigrants.

(c) **Procedure.** An alien who is the brother, sister, or married son or daughter of an American citizen may be classified as a fourth preference quota immigrant only upon the basis of an appropriate petition approved by the Attorney General.⁵⁰ (Section 205) However, the accompanying spouse or child of a brother, sister, or married son or daughter of an American citizen is accorded fourth preference quota status if the consular officer is satisfied that the alien is the spouse or child of a principal alien and is accompanying him. No petition is required on behalf of the accompanying spouse or child. (22 CFR 42.33(b))

A spouse or child may be considered "accompanying" the principal applicant if a visa is issued to such spouse or child within four months of the date of visa issuance to the principal alien. This interpretation applies regardless of whether visas

⁴⁷ See ch. 12, § 2(c) for definition of term "daughter."

⁴⁸ See ch. 5, § 3(e) for definition of term "spouse."

⁴⁹ See ch. 12, § 2(b) for definition of term "child."

⁵⁰ See ch. 16, § 8.

are issued to the principal alien and his spouse or child at the same or a different consular office, or whether the principal applicant, at the time of the issuance of a visa to a spouse or child, has already been admitted to the United States. In view of the derivative character of his quota status, an immigrant to whom a fourth preference quota visa is issued as the accompanying spouse or child of a principal applicant is not admissible as such at a port of entry of the United States if he arrives before the principal alien.

A fourth preference quota visa may be issued to the adopted sons or daughters of American citizens only if they are beneficiaries of valid petitions approved by the Immigration and Naturalization Service prior to September 22, 1959. (Section 5(c) of the Act of September 22, 1959⁵¹ and 22 CFR 42.33(c))

A fourth preference quota visa issued to the brother or sister of an American citizen is identified by the insertion in the visa of the symbol "W-1." A visa issued to the married son or daughter of an American citizen is identified by the symbol "W-2"; one issued to the spouse of a brother, sister, son or daughter of an American citizen by the symbol "W-3"; one issued to the child of a brother, sister, son or daughter of an American citizen, by the symbol "W-4." A fourth preference quota visa issued to the adopted son or daughter of an American citizen who is the beneficiary of a petition approved prior to September 22, 1959 is identified by the symbol "W-5." (22 CFR 42.12(b))

§ 6. Nonpreference quota immigrants.

(a) **Definition.** The portion of any quota not required for visa issuance to first, second or third preference quota immigrants, less the qualified demand by fourth preference quota immigrants up to fifty per cent of the total unused portion, is made available to all other quota immigrants, referred to as nonpreference quota immigrants. (Section 203(a)(4) and 22 CFR 42.34)

An alien, although statutorily entitled to nonquota or preference quota status, is permitted to apply for a nonpreference quota visa. This action may appear appropriate, for example, in the case of the British-born wife of an American citizen in whose behalf a nonquota petition could be filed by her husband. If the British quota is readily available no advantage would accrue and only delay may result if a petition were filed on behalf of the visa applicant. On the other hand, each case will have

⁵¹ 77 Stat. 645.

to be examined on its own merits. For example, a minister of religion chargeable to an open quota would not be well advised to forego nonquota classification as a minister based on a petition by the religious denomination if he leaves behind a family which is to follow to join him at a later date. His wife and children following to join him are entitled to nonquota status only if he himself has been admitted with a nonquota visa as a minister. If he chose to apply for a nonpreference quota visa and preceded his family they would be entitled only to third preference quota status if they wished to follow to join him.

(b) **Procedure.** An alien may be classified as a nonpreference quota immigrant upon the determination of his qualification by the consular officer. No petition is required in his case.

A nonpreference quota immigrant is identified by the insertion in the visa of the symbol "X." (22 CFR 42.12(b))

CHAPTER 12

IMMIGRATION OF CHILDREN, SONS AND DAUGHTERS

SECTION.

1. Background and history.
2. Definition of the terms "child," "son" and "daughter."
 - (a) Summary.
 - (b) "Child."
 - (1) Statutory definition.
 - (2) Scope.
 - (3) Illegitimate child.
 - (4) Stepchild.
 - (5) Legitimated child.
 - (6) Adopted child.
 - (c) "Son" and "daughter."
3. The immigration of children, sons and daughters of United States citizens.
 - (a) Nonquota and preference quota status.
 - (1) Child.
 - (2) Unmarried son and daughter.
 - (3) Married son and daughter.
 - (b) Exceptions from grounds of inadmissibility.
 - (1) Exception from literacy requirement.
 - (2) Waiver of disqualification for criminal or immoral grounds and tuberculous condition.
 - (3) Waiver of disqualification for fraud, misrepresentation or perjury in seeking visa or entry.
4. The immigration of children, sons and daughters of permanent resident aliens.
 - (a) Nonquota and preference quota status.
 - (1) Children of certain nonquota immigrants.
 - (2) Child of skilled alien.
 - (3) Children, sons and daughters of other permanent resident aliens.
 - (b) Exceptions from grounds of inadmissibility.
 - (1) Exception from literacy requirement.
 - (2) Waiver of disqualification for criminal or immoral grounds and tuberculous condition.
 - (3) Waiver of disqualification for fraud, misrepresentation or perjury in seeking visa or entry.
5. The immigration of children, sons and daughters, accompanying immigrant parents.
 - (a) Nonquota and preference quota status.
 - (1) Children of certain nonquota immigrants.
 - (2) Child of skilled alien.
 - (3) Child of fourth preference quota immigrant.
 - (b) Quota chargeability.
 - (c) Exceptions from grounds of inadmissibility.
 - (1) Exception from literacy requirement.
 - (2) Waiver of disqualification for tuberculous condition.
6. The immigration of minor aliens not "children" or "eligible orphans."
 - (a) Background.
 - (b) Procedure.

§ 1. **Background and history.**—The immigration of children into the United States has been consistently a concern of the Congress. This concern has been motivated on one hand by a desire to protect the unattached child, and on the other hand by the Congressional policy of long standing to maintain the existing family unit and to facilitate its reestablishment when separated by migration. The Immigration Act of 1917, in an effort to protect the unattached child, rendered excludable children under sixteen years of age, unaccompanied by, or not coming to, one or both of their parents, except by permission of the Secretary of Labor in individual cases.¹ The First Quota Act of 1921 exempted from quota restrictions children under eighteen years of age of United States citizens.² The Immigration Act of 1924 extended nonquota status to unmarried children under eighteen years of age of United States citizens;³ granted preference quota status to unmarried children under twenty-one years of age of United States citizens;⁴ and, in an effort to prevent the separation of families, accorded privileges in the quota determination to immigrant children under twenty-one years of age accompanying an immigrant parent.⁵ The Immigration and Nationality Act refined and broadened these privileges and extended them to children of Asian ancestry.⁶

The immigration of adopted children has been viewed by Congress with particular concern. The Immigration Act of 1924 specifically excluded from the term "child," and thereby from the special benefits it granted to children, an adopted child, unless the adoption had taken place before January 1, 1924.⁷ In successfully opposing, in 1952, an amendment which would have given adopted children the same status as natural children, offered from the floor to the bill which later became the Immigration and Nationality Act, Representative Francis E. Walter of Pennsylvania, co-author of the Act, said in part:

"Mr. Chairman, I dislike to oppose this amendment, but I feel it is my duty to do so, and for this reason. Under the Act of 1921, I believe, a similar provision was in the law. It developed into such a racket that the Congress, in 1924, changed the law so that today, when a couple wish to adopt a child and wish to bring it to this country, it is necessary that a private bill be introduced. I assure you that the subcommittee on immigration is not looking for any more work than it

¹ Section 3 (39 Stat. 876).

² Section 2(a) (42 Stat. 5).

³ Section 4 (43 Stat. 155).

⁴ Section 6 (43 Stat. 155).

⁵ Section 12(a) (43 Stat. 160).

⁶ See ch. 10, §§ 3, 5.

⁷ Section 28(m) (43 Stat. 169).

now has. I believe it is in the best interests of the United States to determine each one of these matters separately . . .”⁸

The stationing of American service personnel in various parts of the world and the plight of children as an aftermath of World War II created an “extensive interest in the United States in adopting alien orphans and offering them the benefits and the loving care of American homes.”⁹ Congress has given recognition to this interest on several occasions. The Act of June 16, 1950, amending the Displaced Persons Act of 1948, authorized the issuance of 5,000 special nonquota immigrant visas to aliens adopted by United States citizens.¹⁰ The Act of July 29, 1953¹¹ authorized the entry as nonquota immigrants of 500 orphans adopted by United States Government personnel. The Refugee Relief Act of 1953 permitted the issuance of 4,000 nonquota immigrant visas to orphans adopted by United States citizens, referred to as eligible orphans.¹² The Act of September 11, 1957 permitted the admission as nonquota immigrants, without numerical limitation, of children adopted or to be adopted by United States citizens for a two-year period, also referred to as eligible orphans.¹³ Congress extended the lifetime of this Act first to June 30, 1960¹⁴ and then through June 30, 1961.¹⁵

Congress also modified its earlier stand on adopted children when, in 1957, it included in the definition of the term “child” a child adopted while under the age of fourteen years who has thereafter been in the legal custody of, and has resided with, the adopting parent for at least two years.¹⁶

Discussed below are the provisions of existing immigration law governing:

(a) The definition of the terms “child,” “son” and “daughter”;

(b) The immigration of children, sons and daughters of United States citizens;

⁸ Congressional Record of April 24, 1952, p. 4480.

⁹ House Report No. 1199, 85th Congress, First Session, p. 4.

¹⁰ Section 3 (64 Stat. 219).

¹¹ 67 Stat. 229.

¹² Section 5(a) of Act of August 7, 1953 (67 Stat. 400); for a full discussion see pp. 272 to 275 of First Edition.

¹³ 71 Stat. 639.

¹⁴ Act of September 9, 1959 (73 Stat. 490).

¹⁵ Act of July 14, 1960 (74 Stat. 505).

¹⁶ Section 2 of the Act of September 11, 1957 (71 Stat. 639).

(c) The immigration of children, sons and daughters of permanent resident aliens;

(d) The immigration of children, sons and daughters, accompanying immigrant parents; and

(e) The immigration of minor aliens not within the technical definition of the terms "child" or "eligible orphan."

The immigration of "eligible orphans," being authorized by temporary legislation, is discussed in Chapter 52.

§ 2. Definition of the terms "child," "son" and "daughter."

(a) **Summary.** As described in other parts of this chapter, important benefits accrue to an alien who is a "child," "son" or "daughter" as these terms are defined or circumscribed by statute. Whenever these terms are used by the immigration laws or in this text they refer to the technical meaning described below.

(b) "Child."

(1) **Statutory definition.** The Immigration and Nationality Act defines the term "child" as follows:

"The term 'child' means an unmarried person under twenty-one years of age who is —

"(A) a legitimate child; or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

"(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

"(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years."

(Section 101(b)(1) as amended)¹⁷

(2) **Scope.** The condition that an alien must be unmarried and under twenty-one years of age in order to be consid-

¹⁷ Act of September 11, 1957 (71 Stat. 639). The broadened definition of the term "child" contained in the Act of September 11, 1957 was intended to be applied retroactively to the effective date of the Immigration and Nationality Act. (Regional Commissioner, *In the Matter of R.*, 7, I. & N. Dec. 623, December 10, 1957)

ered a "child" must be met both at the time of visa issuance and at the time of application for admission at a port of entry. Consequently, an alien who, at the time of visa issuance, was unmarried and under twenty-one years of age, and derived a benefit from this status under the immigration laws, such as nonquota status from an American citizen parent, is inadmissible if, before applying for admission at a port of entry, he has become married or has reached the age of twenty-one years. (Section 205(d))

In addition to a legitimate child, an illegitimate child, a legitimated child, a stepchild, and an adopted child is considered a "child" but only if he meets the specific requirements set forth for each category in the statutory definition.

(3) **Illegitimate child.** Prior to the Act of September 11, 1957 an illegitimate child was held not to be a "child" under the Immigration and Nationality Act.¹⁸ This Act clarified the original Congressional intent to have an illegitimate child considered a "child." As a result of the amendment, an illegitimate child may now be charged to the quota of his accompanying alien mother, may derive nonquota status from a citizen mother and third preference quota status from a mother who is a permanent resident alien. Such a child, if a United States citizen twenty-one years of age or over, may confer second preference quota status on his mother.

(4) **Stepchild.** A stepchild may be considered a "child" only if he had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred. The Act of September 11, 1957 clarified that a child born out of wedlock, in relation to his mother, may be included in the term "stepchild," and thereby enjoy the same immigration status as other stepchildren. The amendment, however, did not call for any change in the administrative view that a child born out of wedlock derives no benefit, status, or privilege under the immigration laws in relation to his natural father. Consequently, an illegitimate child of the father, despite his marriage to a United States citizen wife, is not the latter's stepchild and cannot qualify for nonquota status.¹⁹

¹⁸ The Attorney General had ruled, prior to the enactment of this amendment, that an illegitimate child is not the "child" of his mother (*In the Matter of A.*, 5, I. & N. Dec. 272, February 2, 1954) and that an illegitimate child is not the "stepchild" of his mother's husband if the husband is not the child's natural father. (*In the Matter of M.*, 5, I. & N. Dec. 120, June 2, 1953) For a fuller discussion of the effect of this interpretation and the views of the Congressional committees see House Report No. 1199, 85th Congress, First Session, p. 7; see also pp. 35 and 36 of First Edition.

¹⁹ BIA, *In the Matter of W.*, 7, I. & N. Dec. 685, March 14, 1958. A married stepdaughter is eligible on petition of citizen stepfather for fourth preference quota status

(5) **Legitimated child.** The legitimation of a child born out of wedlock, in order to be valid, presupposes that the legitimating parent is the natural father. Since the Attorney General is given authority to determine whether an alien is entitled to nonquota status as a child of a United States citizen he may examine whether the legitimation is valid. (Section 205(c))²⁰

(6) **Adopted child.** An adopted child may be considered a "child" only if he was adopted while under the age of fourteen years and if he has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. (Section 101(b)(1)(E)) Not more than two children adopted by the same parent or parents may be accorded "child" status unless necessary to prevent the separation of brothers and sisters. (Section 205(c), as amended)²¹

The requirement that an "adopted child" must have resided with the adopting parents for at least two years does not preclude the computation of residence which occurred prior to the formal adoption decree.²² However, the two-year legal custody and residence required of an adopted child must be had with both of the adoptive parents where two exist, or with one when the family unit consists of only one adoptive parent. Therefore, a child adopted abroad who did not reside with the adoptive father for a two-year period, the father maintaining residence in the United States, is not a "child" and therefore not entitled to nonquota status despite continuous residence since infancy with the adoptive mother.²³ An alien whose for-

as "daughter" if there existed an original relationship of stepparent and stepchild validly created according to the definition in § 101(b)(1)(B). (BIA, *In the Matter of C.*, Interim Decision 1058, March 4, 1960)

²⁰ Consequently, approval of a petition for nonquota status was denied in the case of a minor alien where the petitioner was not the alien's natural father. The Board reached this decision although it recognized that French authorities do not observe the provision of the French Civil Code that a child born out of wedlock is legitimated by the subsequent marriage of his natural parents and acknowledgment of the child by the parent as his own, but accept the declaration of legitimation from a legitimating spouse who is not the natural parent. (BIA, *In the Matter of J.*, 7, I. & N. Dec. 338, November 5, 1956)

²¹ Act of September 22, 1959, § 5(b) (73 Stat. 645).

²² BIA, *In the Matter of M.*, Interim Decision 988, August 22, 1958; approved by Attorney General, March 20, 1959.

²³ Attorney General, *In the Matter of C.F.L.*, Interim Decision 996, April 27, 1959, overruling BIA decisions of October 2 and October 31, 1958. A United States District Court disagreed with the views of the Attorney General when it held that the two-year legal custody and residence required of the adopted child have been fulfilled if had with one of two adoptive parents. (*Ng Fun Yin v. Esperdy*, 187 F. Supp. 51, U.S.D.C.S.N.Y., July 23, 1960) See also BIA, *In the Matter of W.*, Interim Decision 1074, April 27, 1960. Foreign court issuing adoption decree has no jurisdiction to waive the factors necessary to establish parent-child relationship as defined in § 101(b)(1)(E).

eign adoption by his single adoptive mother met the requirements of Section 101(b)(1)(E) acquired nonquota status as "stepchild" under Section 101(b)(1)(B) upon the marriage of the adoptive mother to a United States citizen husband.²⁴

(c) "Son" and "daughter." While the Immigration and Nationality Act defines the term "child" as described under (b), it does not contain a definition of the terms "son" and "daughter" although it uses them as being distinct from the term "child."

Shortly after the enactment of the Immigration and Nationality Act the Board of Immigration Appeals ruled that "it is obvious that the term 'son' and 'daughter' is not limited or circumscribed by the definition of the term 'child' . . ."²⁵ In the same decision the Board reached not only the conclusion that a son or a daughter is not restricted by any age limit, but also that an adopted son or daughter is included within that term.

Representative Francis E. Walter, when offering, in 1959, an amendment to a bill which later became the Act of September 22, 1959, labeled this opinion by the Board an improper ruling stating that "the statutory preferences established for blood relatives of United States citizens and lawfully residing aliens were clearly not designed to benefit minor or adult aliens adopted by United States citizens."²⁶

The resulting amendment to the Immigration and Nationality Act clarifies statutorily that an alien may not be considered a "son" or "daughter" unless the relationship to the parent exists by reason of one of the circumstances applicable to the term "child" as described under (b), except that a son or daughter is not restricted by any age limit or the requirement of being unmarried. (Section 205(b), as amended)²⁷

Consequently, an alien born out of wedlock or an adopted alien may be considered a "son" or "daughter" only if he fulfills the conditions established in the case of a "child" as described above under (b) except that he is not required to be under twenty-one years of age or unmarried.

²⁴ BIA, *In the Matter of A.*, Interim Decision 980, January 12, 1959; see also Regional Commissioner, *In the Matter of R.*, 7, I. & N. Dec. 623, December 10, 1957, approved by Assistant Commissioner.

²⁵ BIA, *In the Matter of R.*, 5, I. & N. Dec. 438, August 25, 1953.

²⁶ Congressional Record of July 6, 1959, pp. 11579 and 11580.

²⁷ Act of September 22, 1959, § 5(a) (73 Stat. 645). As a result of this amendment the Board denied a petition to accord third preference quota status where the relationship of son and daughter to the resident alien petitioner was established by Italian decree of affiliation which is comparable to adoption. (BIA, *In the Matter of P.*, Interim Decision 1046, January 18, 1960)

§ 3. The immigration of children, sons and daughters of United States citizens.

(a) Nonquota and preference quota status.

(1) Child. The child of a United States citizen is entitled to nonquota status.²⁸

(2) Unmarried son and daughter. The unmarried son and daughter of a United States citizen are entitled to second preference quota status.²⁹

(3) Married son and daughter. The married son and daughter of a United States citizen are entitled to fourth preference quota status.³⁰

(b) Exceptions from grounds of inadmissibility.

(1) Exception from literacy requirement. The child, son and daughter, irrespective of their marital status, of a United States citizen are exempted from the literacy requirement.³¹

(2) Waiver of disqualification for criminal or immoral grounds and tuberculous condition. The inadmissibility of the child of a United States citizen based on the child's criminal background, history as a prostitute, or affliction with tuberculosis may be waived in the discretion of the Attorney General.³² This privilege does not extend to the son or daughter of a United States citizen but, by specific statutory authority, is available to a "minor unmarried adopted child" of a United States citizen, apparently irrespective of whether the adoption meets the requirements described in Section 2 above.

(3) Waiver of disqualification for fraud, misrepresentation or perjury in seeking visa or entry. The inadmissibility of the child of a United States citizen based on the child's attempt to procure a visa or entry into the United States by fraud, misrepresentation or perjury may be waived in the discretion of the Attorney General.³³ This privilege does not extend to the son or daughter of a United States citizen or to his "minor unmarried adopted child," thus differing from the exceptions listed under (2).

²⁸ See ch. 7, § 2.

²⁹ See ch. 11, § 3.

³⁰ See ch. 11, § 5.

³¹ See ch. 33, § 23.

³² See ch. 34, § 3(a) and (c).

³³ See ch. 34, § 3(b).

§ 4. The immigration of children, sons and daughters of permanent resident aliens.

(a) Nonquota and preference quota status.

(1) Children of certain nonquota immigrants. The child of a permanent resident alien who was admitted to the United States as a nonquota immigrant native of a Western Hemisphere country or as a minister of religion, is entitled to non-quota status if following to join his parent.³⁴

(2) Child of skilled alien. The child of a permanent resident alien who was admitted as first preference quota immigrant as a skilled alien is entitled to first preference quota status if following to join his parent.³⁵

(3) Children, sons and daughters of other permanent resident aliens. The child and the unmarried son and daughter of a permanent resident alien are entitled to third preference quota status if following to join their parent.³⁶

(b) Exceptions from grounds of inadmissibility.

(1) Exception from literacy requirement. The child, son and daughter, irrespective of their marital status, of a permanent resident alien are exempted from the literacy requirement.³⁷

(2) Waiver of disqualification for criminal or immoral grounds and tuberculous condition. The inadmissibility of the child of a permanent resident alien, based on the child's criminal background, history as a prostitute, or affliction with tuberculosis may be waived in the discretion of the Attorney General.³⁸ This privilege does not extend to the son or daughter of a permanent resident alien but, by specific statutory authority, is available to "a minor unmarried adopted child" of a permanent resident alien, apparently irrespective of whether the adoption meets the requirements described in Section 2 above.

(3) Waiver of disqualification for fraud, misrepresentation or perjury in seeking visa or entry. The inadmissibility of the child of a permanent resident alien based on the child's attempt to procure a visa or entry into the United States by fraud, misrepresentation or perjury may be waived in the dis-

³⁴ See ch. 7, §§ 4, 8.

³⁵ See ch. 11, § 2.

³⁶ See ch. 11, § 4.

³⁷ See ch. 33, § 23.

³⁸ See ch. 34, § 3(a) and (c).

cretion of the Attorney General.³⁹ This privilege does not extend to the son or daughter of a permanent resident alien or to his "minor unmarried adopted child," thus differing from the exception listed under (2) above.

§ 5. The immigration of children, sons and daughters, accompanying immigrant parents.

(a) Nonquota and preference quota status.

(1) **Children of certain nonquota immigrants.** The child of an alien entitled to nonquota status as a native of a Western Hemisphere country, or as a minister of religion, is entitled to nonquota status if accompanying or following to join such parent. The child of an alien entitled to nonquota status as an employee or former employee of the United States Government is entitled to nonquota status only if accompanying his parent.⁴⁰

(2) **Child of skilled alien.** The child of an alien entitled to first preference quota status as a skilled alien is entitled to first preference quota status if accompanying or following to join such parent.⁴¹

(3) **Child of fourth preference quota immigrant.** The child of an alien entitled to fourth preference quota status, if accompanying his parent, is entitled to fourth preference quota status.⁴²

Alien sons or daughters accompanying immigrant parents are not entitled to nonquota or preference quota status.

(b) **Quota chargeability.** A child, irrespective of his ancestry, accompanying an alien parent may be charged to the quota of the parent if accompanying him and if necessary to prevent the separation of child and parent.⁴³ A son or daughter accompanying an alien parent does not as such derive any comparable benefits.

(c) Exceptions from grounds of inadmissibility.

(1) **Exception from literacy requirement.** The child, son and daughter, irrespective of their marital status, of an admissible alien are exempted from the literacy requirement.⁴⁴

³⁹ See ch. 34, § 3(b).

⁴⁰ See ch. 7, §§ 4, 8 and 9.

⁴¹ See ch. 11, § 2.

⁴² See ch. 11, § 5.

⁴³ See ch. 9, § 1(b) and ch. 10, § 5(a).

⁴⁴ See ch. 33, § 23.

(2) **Waiver of disqualification for tuberculous condition.** The Attorney General may waive the inadmissibility of a child based on his affliction with tuberculosis if his alien parent has been issued an immigrant visa.⁴⁵ This privilege does not extend to the son or daughter of such an alien but, by specific statutory authority, is available to "his minor unmarried adopted child," apparently irrespective of whether the adoption meets the requirements described in Section 2 above.

§ 6. **The immigration of minor aliens not "children" or "eligible orphans."**

(a) **Background.** Present statutory provisions relating to the immigration of children are designed on one hand to facilitate the admission of children adopted in good faith and with proper safeguards and, on the other hand, to prevent an abuse of adoption by circumventing the quota limitations of the law. These provisions, described in Section 2(b) (6) above and Chapter 52, are of significance only in the case of minor aliens chargeable to oversubscribed quotas. A minor alien who is a nonquota immigrant because of birth in a nonquota country or who is chargeable to an open quota does not have to rely on the special provisions of law facilitating the immigration of adopted children and, therefore, is not subject to the safeguards and limitations imposed by these provisions.

(b) **Procedure.** The immigration of minor aliens who are not "children" or "eligible orphans"⁴⁶ as defined by law is governed by the same rules as the immigration of any other immigrant. In other words, such a minor alien has to meet the same quantitative and qualitative tests as all other immigrants. He does not enjoy any privilege and is not subject to any controls which do not apply to other immigrants as well. For example, a minor alien, born in Brazil, a nonquota country, or in Ireland, the quota of which has been consistently open, who has been adopted or will be adopted by a United States citizen must meet the usual requirements of the law applicable to other immigrants. The special safeguards designed to protect the "eligible orphan" from abuse do not apply. Different from the eligible orphan, a minor alien who applies for an immigrant visa under the regular provisions of the immigration laws is not barred from admission because he is coming for adoption by a single United States citizen or by an alien couple. In his case no finding is required statutorily that his adoptive parent or parents are persons of good moral character, a prerequisite in the case of the eligible orphan.

⁴⁵ See ch. 34, § 3(c).

⁴⁶ See ch. 52.

CHAPTER 13

VISA AND PASSPORT REQUIREMENT FOR IMMIGRANTS—EXCEPTIONS

SECTION.

1. Visa requirement—Exceptions.
 - (a) Rule.
 - (b) Exceptions.
2. Passport requirement—Exceptions.
 - (a) Passport requirement.
 - (b) Aliens included in single passport.
 - (c) Exemptions from passport requirement.
 - (1) Certain relatives of United States citizens.
 - (2) Certain relatives of aliens lawfully admitted for permanent residence.
 - (3) Returning resident aliens.
 - (4) First preference quota immigrants.
 - (5) Stateless persons.
 - (6) Nationals of Communist-controlled countries.
 - (7) Alien members of the United States armed forces.
 - (8) Beneficiaries of individual waivers.

§ 1. Visa requirement—Exceptions.

(a) **Rule.** At the time of making application for admission at a port of entry in the United States, an immigrant, as a rule, is required to have an immigrant visa properly issued by a consular officer at his office outside of the United States. (Sections 101(a)(16), 211(a))

(b) **Exceptions.** The following classes of immigrants are exempted from the visa requirement:

(1) An alien immigrant child who is born subsequent to the issuance of an immigrant visa to an accompanying parent and who arrives in the United States to apply for admission during the period of validity of his parent's visa. (Section 211(a), 8 CFR 211.1 and 22 CFR 42.5(d))¹

(2) An alien immigrant child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, if the child is accompanying a parent who is admissible into the United States and is entering the United States for permanent residence upon the first return of the parent to the United States after the child's birth, and if the application for admission to the

¹ See ch. 12, § 2(b) for definition of term "child."

United States is made within a period of two years from the child's birth;²

(3) An alien who is returning to an unrelinquished lawful permanent residence after a temporary residence abroad in any places, except Albania and Communist portions of China, Korea, and Viet-Nam, who

(i) either has been abroad for a period of not exceeding one year and presents a valid Form I-151, "Alien Registration Receipt Card;" or

(ii) presents a valid unexpired reentry permit; or

(iii) is the spouse or child of, and has been residing abroad with, a member of the armed forces of the United States stationed abroad pursuant to official orders; or

(iv) satisfies the district director of the Immigration and Naturalization Service in charge of the port of entry that there is good cause for the failure to present the required visa. In the latter case an application for a waiver of the visa requirement must be made on Form I-193; (Sections 211 (b) and 212(a)(20); 8 CFR 211.1 and 22 CFR 42.5(a))³

(4) An American Indian born in Canada and having at least fifty percent of blood of the American Indian race; (Section 289 and 22 CFR 42.5(e))⁴

(5) An alien member of the armed forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, these armed forces, who has been previously lawfully admitted for permanent residence, and who is proceeding to the United States under of-

² This exception to the visa requirement originally contained in 8 CFR 211.2(b) was revoked on February 7, 1956 (21 Fed. Reg. 832), but was administratively reinstated by the Immigration and Naturalization Service effective May 2, 1956.

The 2-week-old Canadian born child of a United States citizen mother is regarded as having been lawfully admitted for permanent residence on April 1, 1934, when she entered the United States accompanied by her mother on the latter's first return to the United States subsequent to the birth of the child, though not in possession of an immigrant visa and no record of her admission can be found, so long as inspection was not avoided and there is no evidence of any fraud in connection with the entry. (Regional Commissioner, *In the Matter of M.*, 7, I. & N. Dec. 311, August 29, 1956)

³ The alien registration receipt card is discussed in ch. 43, the reentry permit in ch. 44. An alien registration receipt card is considered invalid as a document exempting its bearer from the visa requirement if, during his temporary absence abroad, he travelled to, in, or through Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), the Union of Soviet Socialist Republics, or Yugoslavia. (8 CFR 211.1)

⁴ See ch. 35, § 4.

ficial orders or permit of such armed forces; (Section 284 and 22 CFR 42.5(b))

(6) An alien lawfully admitted for permanent residence who seeks to enter the continental United States or any other place under the jurisdiction of the United States directly from Guam, Puerto Rico or the Virgin Islands of the United States. (Section 212(d)(7) and 22 CFR 42.5(c))

§ 2. Passport requirement—Exceptions.

(a) **Passport requirement.** The statute itself does not require an immigrant to be in possession of a passport. However, the Secretary of State is authorized to require that an immigrant present a passport or other suitable travel document at the time he applies for a visa, and the Attorney General has similar authority to require such documentation at the time the immigrant applies for admission to the United States. (Sections 211(e) and 222(b)) Acting under this authority, both the Secretary of State and the Attorney General, in separate but substantially identical regulations, have prescribed that an immigrant must be in possession of an unexpired passport valid for at least sixty days beyond the period of validity of the immigrant visa issued to him unless he falls within one of the exceptions stated below under (c).⁵ (22 CFR 42.112 and 8 CFR 211.2)

(b) **Aliens included in single passport.** The passport requirement may be met by the presentation of a single passport or by the presentation of a passport including more than one person, if the inclusion of more than one person is authorized under the laws or regulations of the issuing authority. In such case a photograph of each person sixteen years of age or over to whom a visa is to be issued must be attached to the passport by the issuing authorities. (22 CFR 42.112(b)) If, under the foreign law, the inclusion of these photographs is not authorized, separate passports must be submitted in connection with the visa application.

(c) **Exemptions from passport requirement.** The following classes of immigrants are exempted from the requirement of a passport:

(1) **Certain relatives of United States citizens.** An immigrant who is the spouse, unmarried son or daughter, or parent,⁶ of a United States citizen;⁷

⁵ For definition of term "passport" see ch. 5, § 3(c).

⁶ See ch. 5, § 3(e) and (f) respectively, for definition of terms "spouse" and "parent." See ch. 12, § 2(c) for definition of terms "son" and "daughter."

⁷ The exemption from the passport requirement does not apply if the immigrant is applying for a visa in the country of which he is a national, and the possession of a passport is required for departure from that country.

(2) **Certain relatives of aliens lawfully admitted for permanent residence.** An immigrant who is the spouse, unmarried son or daughter, or parent⁸ of an alien lawfully admitted for permanent residence;⁹

(3) **Returning resident aliens.** An alien lawfully admitted for permanent residence who is returning to the United States from a temporary visit abroad;¹⁰

(4) **First preference quota immigrants.** An immigrant who is eligible to receive a first preference quota visa and his accompanying spouse and child;¹¹

(5) **Stateless persons.** An immigrant who is a stateless person and his accompanying spouse and unmarried son or daughter;¹²

(6) **Nationals of Communist-controlled countries.** An immigrant who is a national of, and is applying for a visa outside of, a Communist-controlled country and who, because of his opposition to Communism, is unwilling to make application for a passport to, or unable to obtain a passport from, the government of such country, and his accompanying spouse and unmarried son or daughter;¹³

(7) **Alien members of the United States armed forces.** An immigrant who is a member of the armed forces of the United States;

(8) **Beneficiaries of individual waivers.** An immigrant who establishes that he is unable to obtain a passport, who is not within any of the categories listed above under (1) through (7) and in whose case the passport requirement has been waived by the Attorney General and the Secretary of State as evidenced by specific instruction from the Department of State to the consular officer. (Section 222(b), 8 CFR 211.2 and 22 CFR 42.6)

⁸ See footnote 6, *supra*.

⁹ See footnote 7, *supra*.

¹⁰ See footnote 7, *supra*.

¹¹ See footnote 7, *supra*. See also ch. 5, § 3(e) for definition of term "spouse" and ch. 12, § 2(b) for definition of term "child."

¹² See ch. 5, § 3(e) for definition of term "spouse" and ch. 12, § 2(c) for definition of terms "son" and "daughter."

¹³ See footnote 12, *supra*.

CHAPTER 14

VISA PROCEDURE FOR IMMIGRANTS

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SECTION.

13. Immigrant visa application by foreign government officials and international organization aliens.
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§ 1. Summary.—An alien applying for an immigrant visa must submit his application to an American consular officer authorized to issue immigrant visas. Immigrant visas may be issued only at the office of a consular officer outside of the United States. No immigrant visa may be issued within the United States. (Section 101(a)(16))¹

The steps leading to the issuance of an immigrant visa, discussed in this and the following chapter, are summarized below.

(a) **Preliminary application and classification.** After an alien has contacted a consular office and expressed his interest in obtaining an immigrant visa a determination has to be made whether he is classifiable as a nonquota immigrant or a quota immigrant; if a quota immigrant, whether he is chargeable to an open or an oversubscribed quota. This determination is made upon the submission by the applicant of Form FS-497, "Questionnaire to Determine Quota or Nonquota Status and Application for Quota Registration."

(b) **Registration on quota waiting list.** If the applicant is a quota immigrant chargeable to an oversubscribed quota, his name is entered on a quota waiting list and no further action is required on his part until he is notified that his turn on the quota waiting list has been reached.

(c) **Registration on administrative waiting list.** If the alien is a nonquota immigrant or a quota immigrant chargeable to an open quota his name will be registered on an administrative waiting list if it is impossible for administrative reasons to give immediate attention to the application at the consular office at which the application is filed.

(d) **Formal application.** A nonquota immigrant or a quota immigrant who is chargeable to an open quota or, if chargeable to an oversubscribed quota, whose turn has been reached on the quota waiting list, will be informed which documents and other information he has to submit in connection with his visa application.

Once the applicant has assembled all required documents and so informed the consular office, he has to undergo a medical examination and will be invited to appear before a consular

¹ The statute does not prohibit the issuance of nonimmigrant visas within the United States; see ch. 31, § 1(d) and § 6(a).

officer to file his formal application for an immigrant visa on Form FS-510, "Application For Immigrant Visa and Alien Registration." At that time the applicant is interviewed by a consular officer. After the visa interview the consular officer issues or refuses the visa, or holds the case over for further investigation.

(e) **Issuance of immigrant visa.** If the applicant is found qualified the consular officer issues an immigrant visa, usually valid for four months.

(f) **Action after issuance.** Under conditions and for reasons stated in statute and regulations an immigrant visa once issued may:

- (1) be replaced or have its validity extended; or
- (2) be revoked.

(g) **Refusal and review of refusal.** If the consular officer finds the alien ineligible to receive a visa, a formal refusal is made.

The refusal of a visa is subject to review by at least one other consular officer and, under certain circumstances, by the Department of State.² The refusal will be reconsidered upon the submission of new evidence.

§ 2. Place of application for visa and for registration on quota waiting list.—An alien, as a rule, has to apply for an immigrant visa in the consular district in which he has his residence. However, a consular officer has discretionary authority to accept an application for an immigrant visa from an alien who has no residence in his consular district but who is physically present therein; in such case the consular officer may also be directed by the Secretary of State to accept the application. (Section 222(a) and 22 CFR 42.110)

An alien who is chargeable to an oversubscribed quota and, therefore, must have his name registered on a quota waiting list as a first step in his effort to obtain an immigrant visa, is required to make application for registration at an American consular office in the consular district in which he has his residence. However, a consular officer will, at the direction of the Department of State, or may in his discretion, accept an application for registration from nonresidents of the consular district, including aliens in the United States, if they are not

² See ch. 36 for a discussion of the visa refusal and its review.

disqualified from having their names entered on a quota or sub-quota waiting list.³ (22 CFR 42.64(a))

As a rule, an alien applying for an immigrant visa will be required to complete Form FS-497, "Questionnaire to Determine Quota or Nonquota Status and Application for Quota Registration." The data on this form enable the consular officer to determine the applicant's classification and quota chargeability. (22 CFR 42.115) If it is determined that the alien is a nonquota immigrant or is a quota immigrant chargeable to an open quota, he will be informed of the documents required in connection with his immigrant visa application. If it is determined that he is a quota immigrant chargeable to an oversubscribed quota he will be registered on a quota waiting list.

§ 3. Quota waiting lists.—The number of visas which may be issued during any one quota year⁴ to quota immigrants is limited to the available quota numbers under the given quota to which the visa applicant is chargeable.⁵ Since the demand for quota immigrant visas exceeds in many instances the available quota numbers, the law prescribes the order in which applications for quota immigrant visas are to be considered and quota visas issued.

(a) **Priority of registration—General rules.** Within each class of preference and nonpreference quota immigrants the sequence of consideration for visa issuance is determined by the priority of registration of each application. Whenever a quota is oversubscribed, i.e., when the demand for quota numbers is greater than the number available for prompt issuance, the proper establishment of a priority of registration is of greatest importance in the individual case. It may make the difference between the prompt issuance of a visa and a delay, often of many months or years.

Depending on the type of quota immigrant visa for which an alien is applying, different statutory and regulatory rules apply as to how the priority of registration is established. At each consular office quota waiting lists are maintained for every oversubscribed preference or nonpreference portion of a quota or subquota so as to show the priority date of registra-

³ See § 5, *infra*.

⁴ The quota year is identical with the fiscal year and runs from July 1 of one calendar year to June 30 of the next calendar year.

⁵ For a discussion of quota control and the allocation of quotas for visa issuance, see ch. 8, § 5.

tion within each of the preference or nonpreference classes. (Section 203(c) and 22 CFR 42.62(a))⁶

Depending on the type of quota immigrant visa for which application is made, registration priority may be established by one or more of the following factors:

(1) the filing date of an approved petition establishing preference quota status;

(2) the chronological order in which the registration of the applicant on a quota waiting list has been entered; or

(3) in the absence of such registration, by any clear indication of an intention to immigrate into the United States which was contemporaneously recorded in the files of an American consular office or the Department of State. (22 CFR 42.62 and 42.64)

An example of the latter form of establishing priority of registration is the case of a person applying for an American passport who later on is determined not to be a citizen of the United States and then applies for an immigrant visa. In this case the application for a United States passport would be considered to be a "clear indication of an intention to immigrate into the United States," as that term is used in visa regulations.⁷

No alien may be given a priority of registration which is earlier than January 1, 1944. (22 CFR 42.62(e))⁸

(b) Registration priority of first preference quota immigrants. The registration priority of a first preference quota immigrant is determined exclusively by the date on which the approved petition granting first preference quota status was filed with the Immigration and Naturalization Service by the prospective employer. (Section 203(b)) The filing date of the approved first preference petition is entered on the quota waiting list as the date governing the priority of registration. (22 CFR 42.62(b)) The fact that an applicant for a first preference quota visa may have previously applied for a nonpreference quota visa and may have been so registered on a quota waiting list, may not be considered as according him the earlier date

⁶ Quota waiting lists are not required in the case of immigrants chargeable to undersubscribed quotas or in the case of applicants for nonquota visas. See § 8, *infra*, for a discussion of administrative waiting lists.

⁷ Visa Office Bulletin No. 24, August 23, 1957.

⁸ This rule is based on regulations in effect before December 24, 1952 which provided that "all registration or waiting lists maintained under any quota prior to January 1, 1944 should be abolished." (22 CFR 42.302, 1949 edition, 11 Fed. Reg. 8924)

of registration in connection with his application for a first preference quota visa.

(c) **Registration priority of other preference quota immigrants.** The registration priority of a quota immigrant in the second, third and fourth preference classes is determined by the chronological order in which the required petition for immigrants in these classes was filed with the Immigration and Naturalization Service, or by the chronological order in which the immigrant is registered on a quota waiting list at a consular office as the result of his own application for registration, whichever date is earlier. (Section 203(c) and 22 CFR 42.62(c)) In the absence of a registration on a quota waiting list, any other clear indication of intention to immigrate into the United States which was contemporaneously recorded may be considered the date governing the alien's registration priority if it precedes the filing date of the petition. (22 CFR 42.64)

(d) **Registration priority of nonpreference quota immigrants.** The registration priority of a nonpreference quota immigrant is determined by the chronological order in which his application for registration was received at a consular office. (Section 203(c) and 22 CFR 42.62(d)) In the absence of such a registration any clear indication of the applicant's intention to immigrate into the United States which was contemporaneously recorded in the files of an American consular office or the Department of State may be considered as establishing the alien's registration priority. (22 CFR 42.64)

(e) **Procedure in registering alien on quota waiting list.** When an application for registration on Form FS-497 is received at a consular office the date, as well as the hour and minute, wherever practicable, of the receipt of the application form are noted. Except as otherwise described under (b) and (c), the applicant's name is then registered under this date in the proper category on the quota waiting list. (22 CFR 42.64(b)) If the application for registration contains the name of the head of the family and other members of his family, the name of each family member is listed separately under the appropriate quota with cross references to the other members of the family. (22 CFR 42.62)

§ 4. Derivative registration.

(a) **Principal and derivative registrants.** The application for registration on a quota waiting list automatically includes any spouse the applicant may have or may subsequently acquire, and any unmarried son or daughter under twenty-one years of age he or his spouse may have or may subsequently acquire,

regardless of whether the spouse, son or daughter are specifically named in the application for registration.⁹ Under this rule the spouse and unmarried son or daughter under twenty-one years of age of a registrant for a quota visa are considered automatically registered even if the marriage between the registrant and the spouse, or the birth of the son or daughter, takes place after the principal applicant has applied for registration. (22 CFR 42.65(a)) Any alien other than the spouse of the principal applicant and the unmarried son or daughter under twenty-one years of age of the principal applicant or his spouse must be named in the application for registration in order to secure a registration priority.¹⁰

(b) **Termination of derivative registration.** The privilege of derivative registration accorded a spouse or unmarried son or daughter under twenty-one years of age whose name has not been previously recorded on a waiting list, terminates only if by his own act the derivative registrant brings his case within one of the provisions described below in Section 6 leading to the cancellation of a registration. Sons or daughters who qualify as derivative registrants do not lose their status solely because they may subsequently reach the age of twenty-one or marry. (22 CFR 42.65(b))

§ 5. Aliens not to be registered on quota waiting list.

(a) **Rule.** The name of an alien may not be entered on a quota waiting list if he:

- (1) is issued an exchange visitor visa;¹¹
- (2) is in the United States and has or obtains the status of an exchange visitor;
- (3) has been admitted into the United States as a non-immigrant and has willfully violated his status; or

⁹ Registration priority may also be derived from a principal applicant who signified his intention to immigrate into the United States by applying to the Immigration and Naturalization Service for adjustment of status under § 245, as described in ch. 39. Thus, in the case of a mother who was granted adjustment of status and thereafter filed a third preference petition for her two children who had lived with her in her country of birth before she came to the United States, the priority of the children on the quota waiting list was established as of the date of the mother's application for adjustment of status, which, of course, was earlier than the filing date of the approved third preference petition. (Visa Office Bulletin No. 24, August 23, 1957)

¹⁰ This rule, which became effective on July 1, 1954, does not adversely affect any registration privileges acquired under prior regulations. (22 CFR 42.65(a)) Regulations in effect prior to July 1, 1954, permitted the automatic derivative registration of the parent of the principal registrant.

¹¹ See ch. 23.

(4) is in the United States in violation of the immigration laws. (22 CFR 42.63(a) and (b))

(b) Exception. Irrespective of the rule stated under (a) above, the registration priority of the beneficiary of a first preference quota petition is always governed by the date on which the petition according first preference quota status was filed with the Attorney General. (Section 203(b))

(c) Registration after departure. An alien whose name was not entered on a quota waiting list for one of the reasons stated under (a) above may, upon his application, be registered on a quota waiting list with a priority not antedating the date of his departure from the United States. This rule applies also in the case of an alien who is the beneficiary of a second, third or fourth preference quota petition with a filing date antedating his departure from the United States. (22 CFR 42.63(c))

§ 6. Cancellation of registration.

(a) Rule. The registration of a quota immigrant on a quota waiting list must be cancelled under any of the following circumstances:

- (1) the alien is issued an immigrant visa;
- (2) the alien has been denied an immigrant visa on some ground which cannot be overcome;
- (3) the alien was erroneously registered;
- (4) the alien dies;
- (5) the alien abandons his intention to immigrate or fails to evidence his continued intention to apply for a visa within sixty days after being notified that his name has been reached on the quota waiting list;
- (6) the alien is issued an exchange visitor visa or obtains the status of an exchange visitor in the United States;
- (7) the alien is admitted into the United States as a nonimmigrant and willfully violates his status; or
- (8) the alien enters or remains in the United States in violation of law. (22 CFR 42.66(a))

(b) Exception. Irrespective of the rule stated under (a) (5), (6), (7) and (8) above, the priority of registration in the case of a first preference quota immigrant is established by the filing date of the petition approved in his behalf. (Section 203(b) and 22 CFR 42.66(b))

§ 7. Reinstatement of registration and new registration following cancellation.

(a) **Reinstatement.** The name of an alien whose registration has been cancelled under the provisions described in Section 6 may be reinstated on a quota waiting list as of the date of the original registration if:

(1) he could not use an immigrant visa issued to him for reasons beyond his control and makes application for another visa in a subsequent quota year within sixty days of the termination of the circumstances which prevented him from using the original visa;¹² or

(2) his failure to evidence his continued intention to apply for a visa leading to the cancellation of his registration was for reasons beyond his control and he makes application for a visa within sixty days of the termination of circumstances which prevented him from applying for a visa. (22 CFR 42.67(a))

(b) **New registration following cancellation.** An alien whose name has been removed from the quota waiting list under circumstances other than those described under (a) of this section, may not be granted a priority on the quota waiting list which antedates the date of his departure from the United States. (22 CFR 42.67(b))

§ 8. Administrative waiting lists.—Whenever it becomes administratively impracticable at any consular office to process without a waiting period the case of an applicant for a non-quota visa or a quota visa under an undersubscribed quota, each applicant's priority is maintained by the registration of his name on an administrative waiting list. (22 CFR 42.100)

The administrative waiting list has the character of an appointment book. It does not relate to the quota waiting list which is maintained mandatorily by law in the case of quota immigrants chargeable to oversubscribed quotas. The prohibition against the registration of certain aliens on the quota waiting list and the rules concerning the cancellation of their registration do not apply to the registration on an administrative waiting list.

An alien who is a nonquota immigrant or is a quota immigrant chargeable to an undersubscribed quota and who applies

¹² If the alien makes application for the issuance of a visa within the same quota year, a replace visa may be issued as described in ch. 15, § 6(b).

for an immigrant visa at a consular office which is maintaining administrative waiting lists, as a rule, is given an appointment for personal appearance and is advised about the documentation to be presented in connection with the visa application.

§ 9. Medical examination of visa applicants.

(a) **Examination.** Every alien applying for an immigrant visa is required to submit to a physical and mental examination. (Section 221(d) and 22 CFR 42.113(a))

At consular offices where medical officers of the United States Public Health Service are on duty the alien's examination is conducted by these officers. Otherwise the required examination is conducted by a physician selected by the alien from a panel of physicians approved by the consular officer. (22 CFR 42.113(b))

The examination of an applicant for an immigrant visa includes a chest X-ray for tuberculosis and blood test for syphilis. If the examination is conducted at an American consulate where X-ray and laboratory facilities are not available, the applicant may be required to furnish a chest X-ray film, a reading of the film, and blood serology. However, if the examination is made in a community where there are no facilities for the making of these tests, an appropriate statement will be included on the medical examination form so that the required tests can be made when the alien arrives at a port of entry in the United States. (42 CFR 34.4) Applicants ten years of age or less are exempted from the chest X-ray requirement, and those fourteen years of age or less from the blood test requirement. (42 CFR 34.4(d))

(b) **Notification.** If an alien is found to have any physical or mental defect, disease or disability the medical officer reports his findings to the consular officer by medical notification. (42 CFR 34.6) Depending on the seriousness of the finding a Class "A," Class "B" or Class "C" notification is issued.

(1) **Class "A" notification.** A Class "A" notification is issued with respect to aliens who are mandatorily inadmissible because they are:

(i) feeble-minded, insane, or have had one or more attacks of insanity;

(ii) afflicted with psychopathic personality, epilepsy, or a mental defect;

(iii) narcotic drug addicts or chronic alcoholics; or

(iv) afflicted with tuberculosis in any form, leprosy, or any dangerous contagious disease.

A Class "A" notification is not issued if an alien has only mental shortcomings due to ignorance, or is suffering only from a mental condition attributable to remediable physical causes, or from a psychosis of a temporary nature, caused by a toxin, drug or disease. (42 CFR 34.7)

(2) **Class "B" notification.** A Class "B" notification is issued in the case of an alien who has a physical defect, disease or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical well-being. (42 CFR 34.8)

(3) **Class "C" notification.** A Class "C" notification is issued in the case of an alien who has a defect, disease or disability other than one for which a Class "A" or Class "B" notification is required. (42 CFR 34.10)

If a Class "A" notification is issued the consular officer must refuse the visa except in the case of tuberculosis if the conditions for a waiver of this ground of inadmissibility are present.¹³ If a Class "B" or Class "C" notification is issued the consular officer will determine whether the alien's condition may affect his ability to earn a living.¹⁴

§ 10. Documents to be submitted with visa application.

(a) **Required documents.** An alien applying for an immigrant visa has to submit with his application the following documents:

(1) Two copies of a police certificate, i.e., a certificate by the appropriate police authorities stating what their records show concerning the alien, including any arrests, the reasons therefor and the disposition of each case of which there is a record;

(2) Two certified copies of any existing prison records, i.e., an official document containing a report of the applicant's record of confinement in a penal or correctional institution;

(3) Two certified copies of any existing military record, i.e., an official document containing a record of the applicant's service and conduct while in military service including any convictions of crime before military tribunals as distinguished from other criminal records;

(4) Record of birth, i.e., birth certificate showing the date and place of birth and the parentage of the alien, issued by the official custodian of birth records in the country of the applicant's birth and based upon the original registration of birth;

¹³ See ch. 33, § 2 and ch. 34, § 3(c).

¹⁴ See ch. 33, § 3.

(5) Two certified copies of all other records or documents concerning the alien or his case which the consular officer may deem to be necessary. (Section 222(b) and 22 CFR 42.111(b));

(6) Three identical copies of his photograph, one and one-half inches square, unmounted, showing a full front view without head covering and printed on light background.

(Section 221(b) and 22 CFR 42.111(e))

(b) Unobtainable documents. If an immigrant establishes that any document or record required to be submitted with the visa application is unobtainable, the consular officer may permit him to submit instead other satisfactory evidence of the fact to which the document or record would pertain. A document or record is considered unobtainable if it cannot be procured without causing the applicant or a member of his family actual hardship other than normal delay and inconvenience. (22 CFR 42.111(c) (1))

The consular officer determines whether a given document may be considered unavailable by consulting the catalogue of available documents maintained by the Department of State. However, a consular officer may determine that a supporting document in fact is unobtainable although it is listed as available in this catalogue. (22 CFR 42.111(c) (2))

§ 11. Visa interview and execution of formal visa application.

(a) Application and personal appearance. Once the applicant for an immigrant visa has assembled all the documents required in connection with the application as described in Section 10 above, he is given an appointment with a consular officer before whom the visa application is to be executed on Form FS-510, "Application for Immigrant Visa and Alien Registration."¹⁵ Each alien has to make a separate application for an immigrant visa regardless of his age. An alien under fourteen years of age or one who is physically incapable of executing an application may have his application executed by a parent or guardian. If the alien has no parent or guardian

¹⁵ Form FS-510 has replaced, effective August 15, 1960, Form FS-256 in connection with the installation at consular offices of a streamlined immigrant visa procedure. This new procedure, sometimes referred to as the "Montreal procedure" after the first Foreign Service post at which it was tested, emphasizes the importance of the formal visa interview in determining the alien's eligibility to receive a visa, and simplifies office procedures at consular offices. Form FS-510 is prepared bi-lingually for use in the major non-English speaking areas of the world and is so worded that the average visa applicant can fill it out himself. If the applicant is assisted in preparing the application form he must so indicate.

the application may be executed by any person having lawful custody of, or a legitimate interest in, the alien. (Section 222(a) and 22 CFR 42.115(b))

Personal appearance before a consular officer, in connection with the execution of his application, is required of every applicant, regardless of age and irrespective of the fact that the application may be executed by another person. (22 CFR 42.114)

(b) Visa interview—Burden of proof. During the interview the consular officer determines whether the alien is eligible to receive a visa. He has the authority to require that an applicant answer any questions deemed to be material to determining his eligibility and immigrant classification. (22 CFR 42.117 (c)) The consular officer will also determine whether the applicant has fully understood the content of the visa application and the answers given by him or in his name. This determination is of particular importance in cases in which the applicant has been assisted by another person in filling out the visa application form. If indicated the consular officer will amend the questions made on the application form and ask the applicant to endorse them.

The burden of proof is upon the visa applicant to establish that he is eligible to receive a visa and that he is entitled to the quota immigrant or nonquota immigrant status he claims. If the applicant fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa, no visa may be issued. (Section 291) In determining an alien's classification and his eligibility to receive an immigrant visa consular officers are required to give consideration to all documents submitted and any other evidence produced by the alien, including briefs submitted by attorneys or other representatives. (22 CFR 42.111(a))

(c) Content of immigrant visa application. Form FS-510 contains questions statutorily required of every visa applicant relating to his identity, family status, personal description, parentage, destination in the United States and his purpose in going to the United States. Other questions are intended to determine whether the alien is entitled to preference quota or nonquota status and whether he may fall within one of the classes of aliens ineligible to receive an immigrant visa.¹⁶ (Section 222(a))

¹⁶ See ch. 33.

Visa regulations specify that the statutorily required question about the applicant's race and ethnic classification does not pertain to his religion. (22 CFR 42.115(d))

(d) Registration and fingerprinting.

(1) Registration. The statute requires that each alien who applies for an immigrant visa be registered. This registration is achieved by the execution of Form FS-510 which constitutes the alien's registration record. (Section 221(b) and 22 CFR 42.116(a))

(2) Fingerprinting. Every alien applying for an immigrant visa is required to be fingerprinted, except a child under fourteen years of age. Fingerprints are taken on Form AR-4, "Alien Registration Fingerprint Card," or in such other manner as may be authorized by the Department of State. Consular officers may require an applicant for an immigrant visa to be fingerprinted at any time before the formal visa application is filed if the fingerprinting is necessary for purposes of identification or investigation. (Section 221(b) and 22 CFR 42.116(b))

(e) Application fee—Oath, signature and seal. The prescribed fee for the furnishing and verification of each application for an immigrant visa is \$5. This fee is collected from the applicant before the oath is administered. (Section 281(1) and 22 CFR 42.117(a)) The visa application Form FS-510 must be signed, sworn to, or affirmed, by the applicant before the consular officer who will then sign the application and affix the seal of his office. (22 CFR 42.117(b))¹⁷

§ 12. Immigrant preceding his family—Informal examination of members of family.—If an applicant for an immigrant visa proposes to precede his family to the United States, the consular officer may arrange for an informal examination of the other members of the applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive an immigrant visa.

If any member of the applicant's family is found to be ineligible to receive an immigrant visa, the alien who intends to precede his family will be so informed and must acknowledge in writing that he has been so informed. A determination in connection with an informal examination that an alien appears to be eligible to receive a visa carries no assurance that he will be issued an immigrant visa in the future. The question of

¹⁷ See § 11(a) above, for procedure in case of alien under fourteen years of age or one who is physically incapable of executing the application.

eligibility to receive a visa must finally be determined at the time of formal visa application. (22 CFR 42.118)

The finding that a member of the applicant's family is ineligible to receive an immigrant visa, in itself, is no ground for the refusal of a visa to the applicant. The informal examination puts an immigrant who wishes to precede his family on notice in case any member of his family at the time of his application for a visa is permanently ineligible to receive a visa. Thus, the applicant is given an opportunity to change his plans for immigrating to the United States in the light of the examination. Should a family member become ineligible to receive a visa subsequent to the informal examination, for example by becoming a drug addict, he must be denied a visa at the time of his visa application, regardless of the fact that he was not found ineligible to receive a visa at the time of the informal examination.

§ 13. Immigrant visa application by foreign government officials and international organization aliens.—An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee or member of the immediate family of any such alien, is not entitled to apply for, or receive, an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver of all rights, privileges, exemptions and immunities which would otherwise accrue to him because of his occupational status. This waiver has to be executed on Form I-508. (Section 214(b))¹⁸

§ 14. Transfer of immigrant visa cases. The case of an applicant for an immigrant visa which is pending at one consular office may be transferred to another consular office at the applicant's request and risk if:

(1) there is reasonable justification for the transfer of the applicant's file, and

(2) the transferring consular office has no reason to believe that the alien will not appear personally to apply for a visa.

The transfer of a case will include any authorization to grant nonquota or preference quota status based upon an approved petition, the alien's registration priority and all documents relating to the visa applicant.

¹⁸ See also ch. 41.

In no case may a quota number be transferred from one consular office to another. A quota number allotted by the Department of State which cannot be used as a result of a transfer of a case to another office must be returned to the Department. (22 CFR 42.140)

The alien's request for the transfer of his file may be directed to the transferring office or to the receiving office.

CHAPTER 15

THE IMMIGRANT VISA

SECTION.

1. Authority to issue visas.
2. Immigrant visa fee.
3. The immigrant visa—Its issuance.
4. Procedure in issuing immigrant visas.
 - (a) Visa symbol.
 - (b) Petition notation.
 - (c) Quota number.
 - (d) Nonquota number.
 - (e) Dates of issuance and expiration.
 - (f) Port of entry.
 - (g) Passport waiver.
 - (h) Photograph.
5. Validity of immigrant visa.
 - (a) General rule.
 - (b) Rule applicable to adopted children.
 - (c) Extension of validity.
 - (d) Classification and visa validity—Warning to immigrant.
6. Issuance of new or replace visa.
 - (a) New nonquota visa.
 - (b) Replace quota visa.
7. Revocation of immigrant visa.
 - (a) Grounds for revocation.
 - (b) Notice of proposed revocation.
 - (c) Cancellation of visa.
 - (d) Notice of revocation.
 - (e) Reconsideration of revocation.
8. Discontinuance of immigrant visa issuance as sanction.

§ 1. Authority to issue visas.—Consular officers are authorized to issue immigrant visas at designated consular offices abroad. The issuance of immigrant visas within the United States is statutorily prohibited. (Section 101(a) (16) and 22 CFR 42.120) The Department of State publishes periodically lists of consular offices authorized to issue immigrant and nonimmigrant visas.¹

§ 2. Immigrant visa fee.—The fee for the issuance of an immigrant visa is \$20. (Section 281(2)) This fee is collected after the execution of the application and the completion of the visa interview. (22 CFR 42.121)²

¹ See Appendix D for "List of American Diplomatic and Consular Offices Issuing Visas."

² As stated in the preceding chapter, the fee for the application for an immigrant visa is \$5. Before the Immigration and Nationality Act became effective on December 24, 1952, the fee for the verification of the visa application and the issuance of an immigrant visa was \$10. In addition, a head tax of \$8 had to be paid by most aliens entering the United States. The Immigration and Nationality Act eliminated the head tax requirement.

§ 3. The immigrant visa—Its issuance.—The immigrant visa consists of the executed visa application Form FS-510, together with Form FS-511, "Immigrant Visa and Alien Registration," and one copy of each document required by the consular officer in connection with the visa application. (22 CFR 42.124(b)) The alien's passport does not show that an immigrant visa has been issued to him. The previous practice of inserting a stamp or notation in the alien's passport to indicate that an immigrant visa has been issued was discontinued as it led some aliens to believe that this stamp or notation constituted the visa. The immigrant visa is issued by delivery to the immigrant or his authorized agent or representative. (Sections 221(a), 222(e) and 22 CFR 42.124(d))

§ 4. Procedure in issuing immigrant visas.—The following information pertinent to the alien to whom the immigrant visa is issued will be inserted on Form FS-511, "Immigrant Visa and Alien Registration":

(a) **Visa symbol.** A visa symbol indicating the classification of the immigrant as described in Chapter 6;

(b) **Petition notation.** If the immigrant is the beneficiary of an approved petition, a notation indicating that the petition is attached;

(c) **Quota number.** In the case of quota immigrants, the quota number assigned to the immigrant followed by a notation indicating the quota or subquota to which he is chargeable;

(d) **Nonquota number.** In the case of a nonquota immigrant a number in consecutive order in the discretion of the consular officer;

(e) **Dates of issuance and expiration.** The date of issuance and the date of expiration of the visa showing day, month and year in that order;

(f) **Port of entry.** If an immigrant visa is to be valid for admission only at a specified port or ports of entry, the name or names of such port or ports;

(g) **Passport waiver.** If the passport requirement has been waived a notation setting forth the regulations under which the passport was waived;

(h) **Photograph.** A photograph of the alien. (22 CFR 42.124(a))

§ 5. Validity of immigrant visa.

(a) **General rule.** The Immigration and Nationality Act provides that "an immigrant visa shall be valid for such pe-

riod, not exceeding four months, as shall be by regulations prescribed." (Section 221(c))

Under the comparable provisions of the Immigration Act of 1924 an immigration visa did not expire if the alien embarked on a continuous voyage to the United States from a point outside the United States and contiguous territory within a four-month period.³ The legislative history of the Immigration and Nationality Act shows that the omission of this provision from this act was not designed to take away the leeway in the validity period of an immigrant visa. It was intended, under the language of the new act quoted above, to permit discretion in determining whether unforeseen emergencies should be excluded from the period of the visa's validity.⁴

The Board of Immigration Appeals took cognizance of this legislative intent when it held that an immigrant visa does not expire if the alien embarked on a continuous voyage to the United States from a port outside the United States or contiguous territory within the period of the visa's validity. The Board regarded the voyage as continuous even if the immigrant had changed carriers in foreign or contiguous territory for the sole reason of making transportation connection; and also where the vessel or aircraft had made a limited number of stops en route to the United States.⁵

(b) Rule applicable to adopted children. A special rule applies to a visa issued under Section 4 of the Act of September 11, 1957, to an eligible orphan, or under any other immigration law to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States armed forces, or is employed abroad by the United States Government, or is temporarily abroad on business. Such a visa is valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. (22 CFR 42.122(a))⁶

(c) Extension of validity. If the visa was originally issued with a period of validity of less than the one described under (a) and (b) above, it may be extended up to the maximum pe-

³ Section 2(c) of the Immigration Act of 1924 (43 Stat. 153).

⁴ Senate Report No. 1137, 82nd Congress, Second Session, p. 23, and House Report No. 1365, 82nd Congress, Second Session, p. 53.

⁵ BIA, *In the Matter of S.B.*, 7, I. & N. Dec. 298, August 9, 1956.

⁶ Section 4(c), Act of September 11, 1957 (71 Stat. 639); 8 U.S.C. 1205(c), F.C.A. § 1205(c).

riod permitted if the consular officer is satisfied that the alien is eligible for the extension. The extension of the validity may be applied for at the consular office at which the visa was originally issued or at any other immigrant visa issuing office. No fee is charged for extending the period of validity of an immigrant visa. (22 CFR 42.122(b) and (c))

(d) **Classification and visa validity—Warning to immigrant.** As previously described, the quota chargeability of an immigrant as well as his classification may depend on his being the "child" of an accompanying parent or of a United States citizen, or on his being unmarried. If a nonquota or first preference quota visa is issued to an alien as a child, or if a child is charged to the quota of an accompanying parent, the period of validity of the visa must not extend beyond the day immediately preceding the date on which the alien becomes twenty-one years of age, inasmuch as the validity of an immigrant visa at the time its holder applies for admission into the United States is contingent on his having retained his status and quota chargeability. (22 CFR 42.122(d))⁷

§ 6. Issuance of new or replace visa.

(a) **New nonquota visa.** A nonquota immigrant who establishes that his visa has been lost or mutilated, or has expired, and that he is still qualified for it, may be issued a new nonquota immigrant visa upon the payment of the statutory application and visa fees of \$25. Such a visa may be issued at the consular office which issued the original visa or at any other consular office authorized to issue immigrant visas. (22 CFR 42.125)

(b) **Replace quota visa.** A quota immigrant who establishes that his visa has been lost or mutilated, or that he was otherwise unable to use it during the period of its validity because of reasons beyond his control and for which he was not responsible, may be issued a replace quota immigrant visa under the original quota number *during the same quota year* in which the original visa was issued upon the payment of the statutory application and visa fees of \$25. The immigrant must still be qualified to receive such a visa and the consular officer must be in possession of the duplicate, signed, consular file copy of the original visa. (Section 221(c)) A replace visa may be issued at the consular office which issued the original visa or

⁷ Immigrants who derive preferred quota status or quota chargeability as a result of their being unmarried are advised by consular officers that they will be inadmissible if they are not unmarried at the time they apply for admission into the United States.

at any other consular office authorized to issue visas. A replace visa is identified by the insertion of the word "Replace" in the title of Form FS-511. (22 CFR 42.125(b))

§ 7. Revocation of immigrant visa.⁸

(a) **Grounds for revocation.** After the issuance of a visa to an immigrant, the consular officer or the Secretary of State may, at any time, in his discretion, revoke the visa. (Section 221(i)) Visa regulations implement this statutory authority as far as consular officers are concerned by authorizing them to revoke an immigrant visa under the following circumstances:

(1) the consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, or willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; or

(2) the consular officer obtains information establishing that the alien was otherwise ineligible to receive the visa at the time it was issued; or

(3) the consular officer obtains information establishing that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case. (22 CFR 42.134(a))

(b) **Notice of proposed revocation.** The bearer of an immigrant visa which is being considered for revocation will, if practicable, be notified of the proposed revocation and given an opportunity to show cause why the visa should not be revoked. (22 CFR 42.134(b))

(c) **Cancellation of visa.** The holder of a revoked visa will be requested to surrender it to the consular office indicated in the notification of revocation. The cancellation of the visa is effected by writing the word "Revoked" on the visa. The consular officer taking this action is also required to date and sign the cancellation. The revocation of a visa is not invalidated by lack of notice to the alien or failure to effect physical cancellation of the visa prior to the alien's arrival in the United States. (22 CFR 42.134(c))⁹

(d) **Notice of revocation.** Once the visa is revoked, notice of revocation is given the transportation line on which the alien is known or believed to travel to the United States. Furthermore, a report concerning the revocation of an immi-

⁸ The visa refusal and its review are discussed in ch. 36.

⁹ BIA, *In the Matter of P.N.*, Interim Decision 1023, October 7, 1959.

grant visa is sent to the Department of State for transmission to the Attorney General. (22 CFR 42.134(d) and (e))

(e) **Reconsideration of revocation.** Consular officers will consider any evidence which may be submitted by the alien, his attorney or representative, indicating that the revocation of the visa may have been unwarranted. If it is determined that the visa should not have been revoked, a new or replace visa will be issued. (22 CFR 42.134(g))

§ 8. Discontinuance of immigrant visa issuance as sanction.—In an effort to insure the proper enforcement of the deportation provisions of the immigration law, the statute requires that the issuance of immigrant visas to nationals, citizens, subjects, or residents of any country which denies or unduly delays the acceptance of a deportable alien be discontinued. In order to make this sanction effective, the Attorney General first has to make a finding that a given country has denied, or unduly delayed the acceptance of the return of an alien who is a national, citizen, subject, or resident of that country. Then the Attorney General must notify the Secretary of State of this finding. Upon this notification the Secretary of State is required to instruct American consular officers in the territory of that country to discontinue the issuance of immigrant visas to its nationals, citizens, subjects, or residents.

The sanction remains in effect until the Attorney General informs the Secretary of State that the country has accepted the alien whose acceptance it had earlier denied or unduly delayed. While the sanction is in effect against a given country, no immigrant visa may be issued within its territory to one of its nationals, citizens, subjects, or residents, unless the Department of State has informed the consular officer that the sanction has been waived by the Attorney General in the case of an individual alien or a specified class of aliens. (Section 243(g) and 22 CFR 42.120)

It should be noted that the sanction described in the preceding paragraph does not apply to nationals, citizens, subjects, or residents of the affected country who apply for immigrant visas outside of its territory.

CHAPTER 16

PETITION PROCEDURE FOR CERTAIN IMMIGRANTS

SECTION.

1. Petition requirement—Summary.
2. Petition form and fee.
3. Filing of petition by guardian.
4. Preparation and execution of petition.
5. Submission of petition.
6. Petition for classification as nonquota immigrant—Minister of a religious denomination.
7. Petition for classification as first preference quota immigrant for selected immigrant.
8. Petition for immigrant status as relative of United States citizen or lawful resident alien.
9. Significance of approved petition.
10. Action on petition by Immigration and Naturalization Service—Appeal.
11. Revocation of approval of petition.
12. Automatic revocation.
 - (a) Petition for immigrant status as minister of religion.
 - (b) Petition for immigrant status as person whose services are needed urgently in the United States.
 - (c) Petition for immigrant status as relative of United States citizen or lawful resident alien.
13. Revocation on notice—Appeal.
14. Suspension or termination of action by consular officer in petition cases.
 - (a) Suspension of action.
 - (b) Referral to Immigration and Naturalization Service.
 - (c) Termination of action.

§ 1. Petition requirement — Summary. — Consular officers are authorized to grant nonquota or preference quota status to immigrants in the following classes only upon receipt of a petition approved by the Attorney General:

- (a) Ministers applying for nonquota status;
- (b) Selected aliens applying for first preference quota status;
- (c) Spouses and children of American citizens applying for nonquota status;
- (d) Parents of American citizens applying for second preference quota status;
- (e) Unmarried sons and daughters of American citizens applying for second preference quota status;

(f) Spouses and unmarried sons and daughters of permanent resident aliens applying for third preference quota status;

(g) Brothers and sisters of American citizens applying for fourth preference quota status;

(h) Married sons and daughters of American citizens applying for fourth preference quota status. (Sections 204 and 205; 8 CFR 204.1 and 205.1; 22 CFR 42.40, 42.41 and 42.42)¹

The person or organization filing the petition is called "the petitioner," while the alien for whom nonquota or preference quota status is sought is referred to as "the beneficiary."

§ 2. Petition form and fee.—The petition required on behalf of applicants for nonquota and preference quota status, as described in Section 1, must be filed on Form I-130, "Petition to Classify Status of Alien for Issuance of Immigrant Visa." A separate petition Form I-130 must be filed for each beneficiary.² The fee for the filing of each petition is \$10.

The fee is required for filing the petition and is not returnable regardless of the action taken. Money order or check covering the fee should be drawn to the order of "Immigration and Naturalization Service, Department of Justice." If the petitioner resides in Guam the remittance should be drawn in favor of the "Treasurer, Guam"; if residing in the Virgin Islands, in favor of the "Commissioner of Finance of the Virgin Islands." (8 CFR 204.1 and 205.1)³

§ 3. Filing of petition by guardian.—The regulations provide that "a person or guardian may file . . . a petition on behalf of a son, daughter, or ward under fourteen years of age." (8 CFR 103.2) The absence of a similar regulatory provision as to the guardian of a mentally incompetent petitioner led the Board of Immigration Appeals to the conclusion that such a guardian is not eligible to file a visa petition.⁴ However, the courts have held that construction to be clearly inconsistent with the plain reading of the statute and the legislative in-

¹ For a discussion of the petition requirement in the case of eligible orphans see ch. 52.

² Regulations in effect prior to July 1, 1959 permitted in certain instances the filing of one petition for more than one beneficiary. This regulation has been superseded by the present rule.

³ Form I-130, in use since July 1, 1959, took the place of four separate forms previously prescribed in connection with the petition requirement. For a discussion and description of the earlier forms see ch. 12 of the First Edition.

⁴ BIA, *In the Matter of G.*, 5, I. & N. Dec. 721, March 23, 1954.

tent of Congress to give preferential treatment to close relatives of American citizens and permanent resident aliens and, consequently, permitted the guardian of a mentally incompetent citizen husband to file a visa petition on his behalf for the alien wife.⁵

§ 4. Preparation and execution of petition.—A petition must be prepared in one copy only and must be signed, sworn to, or affirmed by the petitioner. If executed in the United States the petition may be sworn to, or affirmed, before an immigration officer, a notary public or any other officer authorized to administer oaths; if executed outside the United States the petition must be sworn to, or affirmed, before an American consular officer or immigration officer. A member of the armed forces of the United States may swear to, or affirm, the petition before an officer of the armed forces authorized to perform notarial acts; his wife or other dependent may do so only if abroad. (Instructions, Form I-130)

§ 5. Submission of petition.—Petitioners residing in the United States are required to submit the petition to the office of the Immigration and Naturalization Service nearest their place of residence, except that petitioners for a selected alien or a minister of religion are required to submit the petition to the office having jurisdiction over the place where the alien's services are to be performed.

If the petitioner resides outside the United States, the petition has to be submitted to one of the offices of the Immigration Service located abroad. The nearest American consulate will advise petitioners on the appropriate office in a particular case. (Instructions, Form I-130)

§ 6. Petition for classification as nonquota immigrant—Minister of a religious denomination.—A religious denomination, having a bona fide organization in the United States which wishes to submit a petition for the issuance of a nonquota visa to a minister of religion, as described in Chapter 7, Section 8, must attach to the petition a statement on official stationery regarding the ordination or other authorization to act as a minister, and showing the name of each religious denomination or sect, the period of service and the addresses at which such services were performed by the beneficiary of the petition during the last two years. These statements must be signed by an official having a knowledge of the prospective immigrant's religious service abroad and must state the source of this knowl-

⁵ *Wong v. Hoy*, 173 F. Supp. 855 (D.C.S.D., Cal., C.D., (1959)).

edge. The petition must also be accompanied by a statement explaining why the services of the alien are needed by the petitioner. (Instructions, Form I-130)

The petition for classification as a nonquota immigrant minister of a religious denomination does not include the minister's spouse and children. Their qualification for nonquota status is determined by the consular officer without the requirement of a petition after the consular officer has received the approved petition on behalf of the principal applicant, or proof of his admission into the United States as a minister of religion.

§ 7. Petition for classification as first preference quota immigrant for selected immigrant.—A petition for the benefit of an immigrant to be classified as a first preference quota immigrant whose services are needed urgently in the United States,⁶ may be filed by the person, institution, firm, organization or governmental agency for whom the work, labor or services are to be performed. (Section 204(b)) The petition may also be filed by an agent of the beneficiary of the petition.⁷

The petitioner filing Form I-130 for a selected immigrant must attach to the petition a statement setting forth the character of the petitioning organization including date and place of incorporation, nature of the business, average number of employees, average annual net income and a description of the prospective work of the petition's beneficiary. The statement must also explain why the services of the alien are urgently needed in the United States and how they will be substantially beneficial to the national economy, cultural interest, or welfare of the United States.

If the alien's eligibility is based solely on high education, a certified copy of the scholastic record showing period of attendance and degrees awarded must be submitted. If the alien's eligibility is based on technical training, specialized experience, or exceptional ability, affidavits from independent sources, such as former employers, or recognized experts in the alien's field of work, material published by the alien, or material published about him may be submitted. If the nature of

⁶ See ch. 11, § 2.

⁷ Central Office, *In the Matter of M.*, 5, I. & N. Dec. 748, April 14, 1954. In this decision the Service held that the agent of an entertainer may be regarded as a person, institution, firm or organization "desiring to have an alien classified" within the meaning of § 204(b). An alien who is the sole owner of a bona fide corporation may qualify as beneficiary of a first preference petition filed by his corporation. (BIA, *In the Matter of M.*, Interim Decision 952, August 27, 1958, approved by Attorney General, September 5, 1958)

the position requires a training period before a person can be regarded as proficient, the length of the period must be stated and proof must be submitted that the alien has had the training for the required time.

A clearance order from the United States Employment Service showing that qualified persons are not available within the United States to perform the work, labor, or services which are to be performed by the beneficiary is usually required by the Immigration and Naturalization Service and must be attached to petition Form I-130. The clearance order is not required if the work or services to be performed by the selected immigrant fall within the group of occupations for which nationally the supply of available workers is inadequate to meet all demands or the nature of which makes it infeasible for the United States Employment Service to attempt to determine availability. (Instructions, Form I-130) Lists of the groups of occupations for which no clearance order is required are furnished periodically by the United States Employment Service, Department of Labor. The two lists effective since October 15, 1960, are reproduced below. The occupational groups included in these lists represent a great many individual occupational classifications. Specific classifications included may be readily determined through reference to the *Dictionary of Occupational Titles*, Volume II, Occupational Classification, Second Edition, 1949.

PART A

OCCUPATIONS AND GROUPS OF OCCUPATIONS FOR WHICH NATIONALLY THE SUPPLY OF AVAILABLE WORKERS IS INADEQUATE TO MEET ALL DEMANDS⁸

Chemists	0-07
College Presidents, Deans, Professors and Instructors for Junior Colleges, Colleges, Universities and professional schools li- censed by the State to give academic degrees	0-11
Dentists	0-13
Metallurgists	0-14
Engineers	
Chemical	0-15
Civil	0-16
Electrical	0-17
Industrial	0-18
Mechanical	0-19
Mining	0-20
Librarians*	0-23

⁸ Code numbers refer to the listing as it appears in the *Dictionary of Occupational Titles*, Volume II.

* Added effective October 15, 1960.

Physicians and Surgeons	0-26
Social and Welfare Workers*	0-27
Superintendents, Principals, Teachers and Instructors for all elementary, secondary, and preparatory schools whether public schools, parochial schools, denominational and sectarian schools, or other general curriculum elementary, secondary, or preparatory schools	0-30, 0-31, 0-32
Nurses (trained)	0-33
Veterinarians	0-34
Agricultural, Biological and Physical Scientists	0-35
Draftsmen	
Aeronautical	0-48.04
Electrical	0-48.11
Marine	0-48.16
Mechanical	0-48.18
Tool Designer	0-48.41
Die Designer	0-48.42
Medical Technician (Med. Ser.)*	0-50.01
Dental Technician (Med. Ser.)*	0-50.06
Executive Chef (Hotel & Rest.)*	2-26.01
Sous Chef (Hotel & Rest.)*	2-26.02
Pastry Chef (Hotel & Rest.)*	2-26.17
Bakers (Bake Prod.)*	4-01.100
Cheese Maker (Dairy Prod.)*	4-06.410
Cabinetmaker*	4-32.100
Carver, Hand*	4-33.361
Orthopedic Shoe Repairman*	4-60.400
Stone Cutter*	4-68
Stonemason*	5-24.210
Terrazzo Worker*	5-24.510

PART B

OCCUPATIONS, GROUPS OF OCCUPATIONS, AND INDUSTRIES THE NATURE OF WHICH MAKES IT INFEASIBLE FOR THE EMPLOYMENT SERVICE TO ATTEMPT TO DETERMINE AVAILABILITY

Occupations

Artists (Painters, Sculptors)
 Authors
 Music Composers and Arrangers

Groups of Occupations

All sporting events participants; including professional athletes, trainers, coaches, managers, and sports officials.
 All types of actors, actresses, comedians, impersonators, and dramatic readers.
 All types of showmen; including theatrical entertainers, physical performers, masters of ceremony and ringmasters, and show animal trainers.
 All types of musicians for the amusement and recreation field; including singers, instrumental musicians, and choirmasters and orchestra leaders.

* Added effective October 15, 1960.

All other direct participants in the performances of the persons in any of the above occupations or groups of occupations.

Industrial Groups

Religious organizations and their institutions for the promotion of religious activities or for charitable purposes.

The petition for classification as first preference quota immigrant does not include the spouse or child of the selected immigrant. Their qualification for first preference quota status is determined by the consular officer without the requirement of a petition after he has received the approved petition on behalf of the principal applicant if he is accompanying his spouse and children. If the selected immigrant has preceded his family into the United States, his spouse and children who wish to follow to join him may be classified first preference quota immigrants only after appropriate evidence has been submitted to the consular officer showing that the preceding spouse or parent was admitted into the United States as a first preference quota immigrant.

§ 8. Petition for immigrant status as relative of United States citizen or lawful resident alien.—A United States citizen seeking nonquota status for his alien spouse or child, or preference quota status for his alien parent, son, daughter, brother, or sister must submit with petition Form I-130 evidence of his relationship to the beneficiary.

If the petition is submitted on behalf of a wife or husband, it must be accompanied by a certificate of marriage to the beneficiary and proof of legal termination of all previous marriages of both wife and husband;

If the petition is submitted on behalf of a child, certificate of marriage of the parents, proof of termination of their prior marriages, and birth certificate of the child must accompany the application;

If the petition is submitted on behalf of a brother or sister, the petitioner's own birth certificate, and the birth certificate of the beneficiary showing a common mother must accompany the application. If the petition is on behalf of a brother or sister having a common father and different mothers, marriage certificate of the parents, and proof of termination of their prior marriages are required. If either petitioner or beneficiary is a married woman, marriage certificates must accompany the petition;

If the petition is submitted on behalf of a parent, the petitioner's birth certificate, and marriage certificate of the parent or parents must accompany the petition as well as proof of termination of any prior marriages of the parents.

A petitioner who claims United States citizenship must submit with petition Form I-130 appropriate proof of his citizenship showing either citizenship at birth or citizenship through naturalization. (Instructions, Form I-130)

§ 9. Significance of approved petition.—The approval of petition Form I-130 by the Attorney General relates only to the classification of the visa applicant as a nonquota or preference quota immigrant. It has the effect of establishing *prima facie* that the alien is entitled to the classification approved in the petition. The approval of the petition does not relieve the alien of the burden of establishing to the satisfaction of the consular officer that he is eligible in all respects to receive a visa. (22 CFR 42.40)

The fact that a petition has been approved on behalf of an immigrant does not entitle him to enter the United States in the classification for which the petition has been approved if, upon his arrival at a port of entry, he is found not to be entitled to such classification. (Sections 204(d) and 205(d))

§ 10. Action on petition by Immigration and Naturalization Service—Appeal.—The determination as to whether a petition filed with the Immigration and Naturalization Service may be approved is limited to a consideration as to whether the eligibility of the beneficiary to the classification requested has been established. Substantive questions of admissibility are not examined in connection with the approval of the petition.⁹

If the district director is satisfied that the beneficiary is eligible for the classification requested, he will approve the petition; otherwise he will disapprove it.

In either case the petitioner is notified of the district director's decision. If the petition is disapproved, the petitioner will be advised of the reasons for the denial. If a nonquota petition for a minister or a first preference petition for a selected alien has been denied, the petitioner is advised of his right to appeal the decision to a regional commissioner of the Immigration and Naturalization Service. If a petition for immigrant status as relative of a United States citizen or lawful resident alien is denied, the petitioner is advised of his right to appeal to the Board of Immigration Appeals. In either case the appeal must be taken within fifteen days after the mailing of the notification. (8 CFR 103.3, 204.1 and 205.1)

§ 11. Revocation of approval of petition.—The Attorney General may at any time, for what he deems to be good and suf-

⁹ BIA, *In the Matter of O.*, Interim Decision 991, March 31, 1959.

ficient cause, revoke the approval of any petition for nonquota or preference quota classification. Such revocation becomes effective as of the date of approval of the petition. The revocation has no effect unless a notice of the revocation is mailed to the petitioner's last known address and unless the notice of revocation is communicated through the Secretary of State to the beneficiary of the petition before he commences his journey to the United States. (Section 206)

If notice of revocation is not so given, and the beneficiary applies for admission to the United States, his admissibility is determined under the procedure applicable to the admission and exclusion of aliens. If at that time the alien is found not to be entitled to the classification accorded by the petition, the admitting officer is not bound by such classification. (Sections 204(d), 205(d) and 206)

§ 12. Automatic revocation.

(a) **Petition for immigrant status as minister of religion.** A petition approved for a minister of religion is revoked automatically as of the date of approval if:

(1) the beneficiary is not issued a visa under the classification approved within one year of the date the petition was approved; or

(2) the petitioner dies, goes out of business, or files a written withdrawal of the petition before the beneficiary's journey to the United States commences. (8 CFR 206.1(a) (1) and (4))

(b) **Petition for immigrant status as person whose services are needed urgently in the United States.** A petition approved for a person whose services are needed urgently in the United States, i.e., a selected alien, is revoked automatically as of the date of approval if:

(1) the beneficiary is not issued a visa on or prior to the expiration date of approval shown on the approved petition;¹⁰ or

(2) the petitioner dies, goes out of business, or files a written withdrawal of the petition before the beneficiary's journey to the United States commences. (8 CFR 206.1(a) (2) and (4))

(c) **Petition for immigrant status as relative of United States citizen or lawful resident alien.** The approval of a petition for

¹⁰ In the case of any such petition terminated by the expiration of the period for which approval was given, the Attorney General may, in his discretion, reaffirm his approval for an additional period.

immigrant status as relative of a United States citizen or a lawful resident alien is revoked automatically as of the date of approval under any of the following circumstances:

(1) upon formal notice of withdrawal filed by the petitioner with the officer who approved the petition;

(2) upon the death of the petitioner or beneficiary;

(3) upon the legal termination of the relationship of husband and wife when a petition has accorded the spouse of a citizen or lawful resident alien nonquota or third preference quota status;

(4) if a beneficiary, accorded nonquota status as the child of a United States citizen, reaches the age of twenty-one (however, an approved nonquota petition for the child of an American citizen remains valid until the expiration of three years from the date of its approval or last revalidation, for second preference quota status if the beneficiary remains unmarried and for fourth preference quota status in the event of marriage of the beneficiary);¹¹

(5) upon the marriage of a beneficiary accorded second preference quota status as a son or daughter of a United States citizen (however, an approved second preference quota petition for the unmarried son or daughter of a United States citizen is valid for a period of three years from the date of initial approval or last revalidation to accord fourth preference quota status in the event the beneficiary marries);¹²

(6) upon the marriage of a beneficiary accorded third preference quota status as a son or daughter of a lawful resident alien;

(7) upon the expiration of three years from the date of initial approval or last revalidation. (8 CFR 206.1(b)(1) to (7))¹³

§ 13. Revocation on notice—Appeal.—The approval of a petition for a minister or a person whose services are needed urgently in the United States or for a relative of a United States citizen or lawful resident alien may be revoked on any ground other than those specified as grounds for automatic revocation by any officer authorized to approve the petition when the

¹¹ Petitions which were automatically revoked by failure to obtain a visa within the prescribed period of time may be revalidated by a district director in his discretion, retroactively as of the date of the initial approval. (8 CFR 206.1(c))

¹² See footnote 11, *supra*.

¹³ See footnote 11, *supra*.

propriety of such revocation is brought to the attention of the Immigration and Naturalization Service; for example, through the request of a consular officer for revocation or reconsideration of an approved petition. (8 CFR 206.2)

Revocation of the approval of a petition for reasons other than those listed as grounds for automatic revocation may be made only upon notice to the petitioner who is to be given opportunity to offer evidence in support of his petition and in opposition to the grounds alleged for revocation of the approval. (8 CFR 206.3)

If the approval of a petition for nonquota status as a minister or first preference quota status as a selected alien is revoked, the petitioner may appeal the decision within fifteen days of the mailing of the notification to a regional commissioner of the Immigration and Naturalization Service. (8 CFR 206.3)

If a petition for nonquota or preference quota status as relative of a United States citizen or of a lawful resident alien is revoked the petitioner may appeal within fifteen days of the mailing of the notification to the Board of Immigration Appeals. (8 CFR 206.3)

If a petition is revoked, notice of revocation is sent to the appropriate consular office.

§ 14. Suspension or termination of action by consular officer in petition cases.

(a) **Suspension of action.** A consular officer will suspend action in a petition case under any of the following circumstances:

- (1) the petitioner requests suspension of action;
- (2) the consular officer knows or has reason to believe that the petition was approved erroneously, or that the approval of the petition was obtained by fraud, misrepresentation, or other unlawful means, or that the beneficiary is not entitled for any other reason to the status approved;
- (3) the petition has been automatically revoked, as described under Section 12 above, due to the beneficiary's failure to obtain a visa within the prescribed period of validity of the petition. (22 CFR 42.43(a))

(b) **Referral to Immigration and Naturalization Service.** If action on a petition has been suspended for the reasons stated under (a) (1) or (2), the consular officer will forward the petition to the Department of State with a report of the facts in order that it may be established whether the Immigration and Natural-

ization Service desires to revoke or reaffirm the approval of the petition. If action on the petition has been suspended for the reasons stated under (a)(3), the consular officer will, at the request of the beneficiary, return the petition to the office of the Service which approved it for a determination whether it may be revalidated. In a preference quota case the petition will be submitted to the Immigration Service only at such time as it appears that a quota number may be available within one year for the issuance of an immigrant visa. (22 CFR 42.43(a))

(c) **Termination of action.** Consular officers will terminate action in petition cases if the approval of a petition for non-quota or preference quota status has been revoked on notice, as described in Section 13 above, and notice of revocation has been communicated to the consular officer. Action will also be terminated if the consular officer finds that the petition has been automatically revoked, as described under Section 12 above, and that it may not be revalidated. (22 CFR 42.43(b))

PART III

NONIMMIGRANTS

CHAPTER 17

CLASSES AND CLASSIFICATION OF NONIMMIGRANTS

SECTION.

1. Summary.
2. Classes of nonimmigrants—Visa symbols.
3. Significance of nonimmigrant classification.
 - (a) Immigrant or nonimmigrant.
 - (b) Nonimmigrant classifications—Similarities and differences.
 - (1) Residence abroad.
 - (2) Requirement of certification or petitions.
 - (3) Spouses and children of nonimmigrants.
 - (c) Principal and incidental purpose.
 - (d) Issuance of more than one nonimmigrant visa.

§ 1. **Summary.** — Aliens coming to the United States, as stated in Chapter 2, are either immigrants or nonimmigrants. Every alien is presumed to be an immigrant until he establishes to the satisfaction of the consular officer at the time of application for a visa, and of the immigration officer at the time of application for admission, that he is entitled to a nonimmigrant status as defined in the Immigration and Nationality Act. (Section 214(b) and 22 CFR 41.10) Thus, an alien may be classified as a nonimmigrant only if he falls within one of the classes of aliens listed in § 2.

§ 2. **Classes of nonimmigrants—Visa symbols.** — The various classes and subclasses of nonimmigrants, listed in the following table, are fully discussed in Chapters 18 through 28. In order to simplify the identification of nonimmigrant visas, regulations prescribe that the appropriate symbol listed in the last column of the table be inserted in the visa. The middle column lists the statutory authority for each classification. (22 CFR 41.12)

Classes of Nonimmigrants	Citation	Symbol to be inserted in visa
Ambassador, public minister, career diplomatic or consular officer, and members of immediate family	101(a)(15)(A)(i) 66 Stat. 167	A-1
Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii) 66 Stat. 167	A-2

Classes of Nonimmigrants	Citation	Symbol to be inserted in visa
Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immediate family	101(a)(15)(A)(iii) 66 Stat. 167	A-3
Temporary visitor for business	101(a)(15)(B) 66 Stat. 167	B-1
Temporary visitor for pleasure	101(a)(15)(B) 66 Stat. 167	B-2
Alien in transit	101(a)(15)(C) 66 Stat. 167	C-1
Alien in transit to United Nations Headquarters District under § 11(3), (4), or (5) of the Headquarters Agreement	101(a)(15)(C) 66 Stat. 167	C-2
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8) 66 Stat. 188	C-3
Crewman (seaman or airman)	101(a)(15)(D) 66 Stat. 167	D
Treaty trader, spouse and children	101(a)(15)(E)(i) 66 Stat. 168	E-1
Treaty investor, spouse and children	101(a)(15)(E)(ii) 66 Stat. 168	E-2
Student	101(a)(15)(F) 66 Stat. 168	F
Principal resident representative of recognized foreign member government to international organization, his staff, and members of immediate family	101(a)(15)(G)(i) 66 Stat. 168	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii) 66 Stat. 168	G-2
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(iii) 66 Stat. 168	G-3
International organization officer or employee, and members of immediate family	101(a)(15)(G)(iv) 66 Stat. 168	G-4

Classes of Nonimmigrants	Citation	Symbol to be inserted in visa
Attendant, servant or personal employee of G-1, G-2, G-3 and G-4 classes, and members of immediate family	101(a)(15)(G)(v) 66 Stat. 168	G-5
Temporary worker of distinguished merit and ability	101(a)(15)(H)(i) 66 Stat. 168	H-1
Temporary worker performing services unavailable in the United States	101(a)(15)(H)(ii) 66 Stat. 168	H-2
Industrial trainee	101(a)(15)(H)(iii) 66 Stat. 168	H-3
Representative of foreign information media, spouse and children	101(a)(15)(I) 66 Stat. 168	I
Exchange visitor	101(a)(15) and 402 (f) 66 Stat. 167, 276	J
Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of his official staff: Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO, other permanent NATO officials of similar rank, and members of immediate family	Art. 12, 5 UST 1094 Art. 20, 5 UST 1098	NATO-1
Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas	Art. 13, 5 UST 1094 Art. 1, 4 UST 1794 Art. 3, 4 UST 1796	NATO-2
Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family	Art. 14, 5 UST 1096	NATO-3
Officials of NATO (other than those classifiable under NATO-1) and members of immediate family	Art. 18, 5 UST 1098	NATO-4

Classes of Nonimmigrants	Citation	Symbol to be inserted in visa
Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO, and their dependents	Art. 21, 5 UST 1100	NATO-5
Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and their dependents	Art. 1, 4 UST 1794 Art. 3, 5 UST 877	NATO-6
Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5 and NATO-6 classes, and members of immediate family	Arts. 12-20, 5 UST 1094-1098	NATO-7

§ 3. Significance of nonimmigrant classification.—The various classes of nonimmigrants, the specific conditions for their classification, their admission into the United States and an extension of their stay are discussed after a presentation of the general qualifications and documentary requirements nonimmigrants have to meet.

The procedures relating to the application and issuance of nonimmigrant visas are discussed in Chapter 31; the qualitative requirements nonimmigrants have to meet before they may be issued visas and admitted into the United States in Chapter 33.

(a) **Immigrant or nonimmigrant.** Considerable significance is attached to the classification of an alien. Whether an alien applies for classification as an immigrant or a nonimmigrant not only governs the standards of his classification but it also determines the qualitative tests he has to meet before he may be issued a visa and admitted into the United States. Since no quantitative restrictions apply to nonimmigrants and stricter qualitative tests apply to immigrants, the law considers every alien applying for a visa an immigrant until he establishes that he qualifies for classification under one of the defined classes of nonimmigrants. Consequently, the law does not bar an alien who would be qualified to obtain a nonimmigrant visa from getting an immigrant visa if he meets the requirements therefor. The law follows this approach on the assumption based on experience that an alien, barred by the

more severe qualitative and quantitative restrictions applicable to immigrants, may attempt to enter as a nonimmigrant although in fact he wishes to remain in the United States permanently.

The basic differences in the treatment accorded by the law to nonimmigrants as compared to immigrants are the following:

(1) Numerical restrictions on the number of aliens admissible each year apply to quota immigrants only, not to nonimmigrants;

(2) Certain statutory grounds of inadmissibility, such as illiteracy and polygamy, apply to immigrants but not to nonimmigrants;

(3) Other grounds of inadmissibility, except the most serious security grounds, can be waived on a discretionary basis in the case of nonimmigrants, but only on a very limited scale in the case of immigrants;

(4) Nonimmigrant visa procedures in general are simpler and less time-consuming than those applicable to immigrants.

The law's presumption that an alien is an immigrant until he proves that he is a nonimmigrant is of greater significance in areas with relatively small quotas which are in heavy demand and often oversubscribed for years. It is in these areas that an alien is more likely to attempt to secure fraudulently a non-immigrant visa when he knows that a quota immigrant visa may not become available for years. The determination whether the application by an alien for a nonimmigrant visa is made in good faith is frequently difficult to make. In the process of deciding this question, consular officers will take into account the preponderance of ties which the alien has in the United States as against the country of his foreign residence. Family ties, business associations and investments are factors which will be taken into account in making this decision.

That an applicant for a nonimmigrant visa previously expressed a desire to enter the United States as an immigrant and may still have such a desire does not preclude his being a bona fide nonimmigrant for the purpose of a specific trip to the United States.¹ This is recognized by the provisions of visa regulations permitting applicants for quota immigrant visas to be retained on quota waiting lists while in the United States as nonimmigrants as long as they do not willfully violate their

¹ Regional Commissioner, *In the Matter of H.R.*, approved by Assistant Commissioner, 7, I. & N. Dec. 651, February 18, 1958.

nonimmigrant status.² For example, an alien who is registered as an intending immigrant on the waiting list of an oversubscribed quota may well establish, by the submission of appropriate evidence, that he intends to visit the United States temporarily to attend a business conference upon the termination of which he will return to his home country. On the other hand, once an alien has expressed his desire to immigrate to the United States, his intent to visit the United States as a nonimmigrant calls for convincing documentation.

(b) Nonimmigrant classifications — Similarities and differences. Within the various nonimmigrant classifications certain basic similarities and differences between the several classes can be observed.

(1) Residence abroad. A visitor for business or pleasure, an exchange visitor, a student, a temporary worker and an industrial trainee are required to have a residence in a foreign country which they have no intention of abandoning. This requirement does not apply to other nonimmigrant classes since some of them derive their classification from a treaty or from their official status, as in the case of treaty traders and investors, foreign government officials, international organization aliens, NATO officials, and representatives of information media, or because the particular classification provides other safeguards for the alien's departure from the United States as in the case of transit aliens and alien crewmen.

In determining whether an applicant for a nonimmigrant visa "has a residence in a foreign country which he has no intention of abandoning," consular officers consider the following factors:

(i) Does the applicant have a permanent place of abode, reasonably permanent employment, or compelling business or close family ties abroad which may be expected to cause him to depart from the United States after the completion of his contemplated temporary visit in the United States;

(ii) Has the applicant presented satisfactory evidence to support his statement that he intends to visit the United States and return abroad promptly upon the conclusion of his visit;

(iii) Has the applicant presented satisfactory evidence to show that he will be admitted into the country to which he intends to proceed following his temporary stay in the United States;

² 22 CFR 42.66(a)(7).

(iv) Has the applicant established with reasonable certainty the maximum length of time he will remain in the United States;

(v) Does the applicant have closer family and other ties abroad than in the United States;

(vi) Is the applicant registered on a quota waiting list as an intending immigrant;

(vii) Has the applicant been refused an immigrant visa;

(viii) Is the applicant chargeable to a heavily oversubscribed quota (whether or not he is registered on a quota waiting list), and does he apparently lack compelling ties abroad. If so, do these circumstances, considered in the light of all of the facts, warrant a reasonable conclusion that the alien has failed to establish that he has a residence in a foreign country which he has no intention of abandoning and that he intends to return abroad upon the conclusion of his visit in the United States;

(ix) Is the applicant to be accompanied by most or all of the members of his immediate family; if so, has the reason for their accompanying him been satisfactorily explained;

(x) Is the applicant's financial status such that he may be unable to defray the expenses of his visit and return abroad without recourse to employment in the United States.³

(2) Requirement of certifications or petitions. The classification of three nonimmigrant classes may take place only if the consular officer is in possession of certifications or petitions required by statute or regulations:

(i) A student must present Form I-20, "Certificate of Eligibility," executed by the accepting school;

(ii) A temporary worker and trainee may be so classified only if petition Form I-129B, "Petition for Permission to Import Nonimmigrant Aliens," filed by the prospective employer or trainer, has been approved by the Attorney General;

(iii) An exchange visitor must present Form DSP-66, "Certificate of Eligibility for Exchange Visitor Status," executed by his sponsor.

³ Visa Office Bulletin No. 48, November 2, 1959.

However, the approval of petition Form I-129B or the execution of Form I-20 or DSP-66 does not, by itself, establish that the alien is a bona fide nonimmigrant or that he is otherwise eligible to receive a nonimmigrant visa.

(3) **Spouses and children of nonimmigrants.** In some non-immigrant classes each alien must establish in his own right that he is qualified for the particular classification, while in other nonimmigrant classes a spouse and child, and sometimes others essential to the principal alien's purpose in coming to the United States, derive status from him. Visitors for business or pleasure, aliens in transit, crewmen, students, temporary workers, industrial trainees, and exchange visitors must establish their qualification individually and do not confer derivative status on others. For example, an alien wife wishing to accompany her husband who plans to visit the United States for business does not derive status from her husband but must qualify in her own right for a proper nonimmigrant classification, such as visitor for pleasure. The wife of an alien student can accompany her husband to the United States only if she qualifies as a student in her own right or in one of the other nonimmigrant classifications. The wife and child of an alien crewman who accompany him may not be classified as "crewmen" unless they work on board ship themselves, but, depending on the circumstances, may qualify as visitors for pleasure or transit aliens.

On the other hand, the spouses and children of treaty aliens and of representatives of foreign information media derive status from the principal alien, as do the members of the immediate families as well as attendants, servants and personal employees and the members of their immediate families, of foreign government officials, international organization aliens and NATO aliens.

When an alien derives nonimmigrant status from a principal alien as described in the preceding paragraph, he may accompany him to or follow to join him in the United States, but may not precede him.

Once a principal alien has left the United States, the members of his family and others deriving status from him who have also left the United States cannot qualify for admission into the United States under their derivative status before the return to the United States of the principal alien.⁴

⁴ For pertinent ruling in the case of the spouse and children of a treaty trader, see BIA, *In the Matter of C.*, 6, I. & N. Dec. 679, August 18, 1955.

(c) **Principal and incidental purpose.** If an alien, applying for a nonimmigrant visa, comes for several purposes each of which would bring him into a different nonimmigrant classification, he will be classified according to the primary purpose. For example, if an alien who is accepted by a recognized school as a student wishes to visit relatives or tour the United States before his school term begins, he will be classified as a student since his intent to visit relatives or tour the United States is only incidental to his primary purpose of attending school. Similarly, an alien who wishes to visit the United States for pleasure is to be classified as a visitor for pleasure although he is planning to attend a series of lectures incidental to his pleasure visit. Regulations prescribe that an alien who is entitled to the classification of a foreign government official will be so classified although he may also be eligible for another nonimmigrant classification. (22 CFR 41.20(e))

(d) **Issuance of more than one nonimmigrant visa.** If an alien intends one or more entries for a principal purpose he will be issued only one nonimmigrant visa, irrespective of the fact that he may incidentally also engage in activities which would bring him into another nonimmigrant classification. However, if an alien plans to make separate entries for two distinct purposes which bring him within two different nonimmigrant classifications, the consular officer may issue two visas, one for each entry and purpose. For example, if an alien physician intends to visit the United States for pleasure, then depart for Canada, and return to the United States to hold a series of lectures for which he has been invited by a sponsor of an exchange visitor program, he may be issued simultaneously two visas, one as a visitor for pleasure for his first entry and one as an exchange visitor for his second entry.

This case is to be distinguished from that of an alien who seeks to enter the United States for one nonimmigrant purpose and, after admission, wishes to engage in an activity which calls for another nonimmigrant classification. In such case the alien has to apply to the Immigration and Naturalization Service for change of status from one nonimmigrant classification to another, as described in Chapter 42.

CHAPTER 18

OFFICIALS OF FOREIGN GOVERNMENTS

SECTION.

1. Definition.
 - (a) Foreign government officials.
 - (1) Term "accredited."
 - (2) Terms "ambassador" and "public minister."
 - (3) Purpose of visit and classification.
 - (4) "A" classification and type of visa.
 - (5) Official of unrecognized government.
 - (b) Attendants, servants, and personal employees.
 - (c) Members of immediate family.
 - (d) Couriers.
2. Significance of "A" visa.
3. Special requirements and conditions.
 - (a) Passport requirement.
 - (b) Notification.
 - (c) Exemption from certain exclusion and deportation provisions.
 - (d) Application for extension of stay by attendant, servant, or personal employee.

§ 1. Definition. — Nonimmigrant classification is accorded aliens who fall within one of the following three categories of foreign government officials:

(1) Ambassador, public minister, or career diplomatic or consular officer accredited by a foreign government recognized *de jure* by the United States and accepted by the President or by the Secretary of State, and the members of his immediate family. Such alien is issued an "A-1" visa. (Section 101(a) (15) (A) (i) and 22 CFR 41.12)

(2) Upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized *de jure* by the United States and who are accepted by the Secretary of State, and the members of their immediate families. Such aliens are issued an "A-2" visa. (Section 101(a) (15) (A) (ii) and 22 CFR 41.12)

(3) Upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status as described above under (1) and (2). Such aliens are issued an "A-3" visa. (Section 101(a) (15) (A) (iii) and 22 CFR 41.12)

(a) Foreign government officials.

(1) Term "accredited." A foreign government official is "accredited" only if he holds an official position, other than an

honorary official position, with the government he represents, and is in possession of a travel document or other evidence showing that he seeks to enter the United States for the purpose of transacting official business for that government. (22 CFR 41.1)¹

(2) **Terms "ambassador" and "public minister."** The terms "ambassador" and "public minister" used in Section 101(a) (15) (A) (i) are identical with those used in Article II Section (2) of the Constitution. They have been interpreted to comprehend "all officers having diplomatic functions, whatever their title or designation."² The term "diplomatic officer" includes ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, charges d'affaires, counselors, agents, and secretaries of embassies and legations.³

(3) **Purpose of visit and classification.** If an alien is entitled to classification as a foreign government official and to another nonimmigrant classification, he will be given the classification of foreign government official. (22 CFR 41.20(e)) For example, if an alien, in addition to being his country's ambassador to the United States, represents his country before the United Nations, he will be given an "A-1" classification and not a "G-1" classification.

A foreign government official or employee who seeks to enter the United States temporarily other than as a representative or employee of a foreign government may not be given an "A" classification. (22 CFR 41.20(c))⁴ For example, if the French Ambassador to Mexico wishes to enter the United States for personal business or pleasure he is not entitled to an "A" classification but, depending on the purpose of his coming, may be classified as a visitor for business or a visitor for pleasure. A foreign government official who transits the United States on his way to his foreign assignment outside of the United States is not entitled to an "A" classification but will be classified "C-3."⁵

¹ The regulatory requirement that such an alien must be a national of the country whose government he serves was eliminated from visa regulations, effective January 1, 1960.

² 7 Op. Atty. Gen. 168 (1855); see also *The Constitution of the United States of America, Analysis and Interpretation*, p. 445, Washington, 1953.

³ Hackworth, *Digest of International Law*, Vol. IV, pp. 393 and 394, Washington, 1953.

⁴ See also Senate Report No. 1137, 82nd Congress, Second Session, p. 19.

⁵ See ch. 27, § 5.

(4) **"A" classification and type of visa.** An alien's qualification for "A" classification must be distinguished from his entitlement to a diplomatic or official visa as discussed more fully in Chapter 30. An alien entitled to a diplomatic visa because of his official position, such as a cabinet member or a justice of a highest national judicial court, is not classifiable as a foreign government official unless he meets the requirements stated above.

(5) **Official of unrecognized government.** An official of a foreign government which is not recognized *de jure* by the United States who is proceeding to the United States on an official mission for his government or to an international organization is not classifiable "A" but, depending on his purpose, as a visitor for business, an alien in transit, or an international organization alien.⁶ (22 CFR 41.21)

(b) **Attendants, servants, and personal employees.** "Attendants" are aliens who are paid from the public funds of a foreign government and are accompanying or following to join the principal alien to whom they owe a duty or service and from whom they derive their status. (22 CFR 41.1)

"Servants" and "personal employees," as distinguished from "attendants," are aliens who are employed in a domestic or personal capacity by a foreign government official or employee from whom they derive their status and who seek to enter the United States solely for the purpose of such employment. (22 CFR 41.1)

(c) **Members of immediate family.** Members of the immediate family of a foreign government official, attendant, servant, or personal employee are close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, and who will reside regularly in the household of the foreign government official, attendant, servant, or personal employee from whom they derive their status. (22 CFR 41.1)

(d) **Couriers.** An alien who is regularly and professionally employed as a courier by the government of the country to which he owes allegiance is classifiable "A-1" if he is proceeding to the United States on official business for his government. (22 CFR 41.22(a))

An alien who is not regularly and professionally employed as a courier by the government of the country to which he

⁶ See chs. 21, 27 and 19.

owes allegiance is classifiable "A-2" if he holds an official position with that government and is proceeding to the United States as a courier on official business for his government. (22 CFR 41.22(b))

An alien who is serving in the capacity of a courier but who is not regularly and professionally employed as such and who holds no official position with, or is not a national of, the country whose government he is serving, is classifiable as a visitor for business, "B-1." (22 CFR 41.22(c))

§ 2. Significance of "A" visa.—An "A" visa issued to an alien is prima facie evidence of his proper classification when presented to the immigration authorities at a port of entry. (22 CFR 41.14 and 8 CFR 214.2(a))⁷

§ 3. Special requirements and conditions.

(a) **Passport requirement.** An alien who applies for admission into the United States holding an "A-1" or "A-2" visa is required to present a passport which is valid and unexpired only on the date of his application for admission into the United States. (Section 102, 22 CFR 41.91(f)(1) and 8 CFR 212.1) The passport of an alien classified "A-3" must meet the general validity requirements.⁸

(b) **Notification.** An alien admitted into the United States with an "A-1" or "A-2" visa must be notified to the Secretary of State by the mission of the country whose government he is serving as an official or employee unless he is a member of a class or group which has been specifically exempted from this requirement. (22 CFR 41.20(b))

(c) **Exemption from certain exclusion and deportation provisions.** Foreign government officials who are classified "A-1," "A-2" or "A-3" are exempt from certain grounds of inadmissibility; those classified "A-1" who fail to maintain their status may not be deported without the approval of the Secretary of State.⁹

(d) **Application for extension of stay by attendant, servant, or personal employee.** An attendant, servant, or personal employee who applies for an extension of his temporary stay must attach to his application a written statement from the foreign

⁷ Regulations of the Immigration and Naturalization Service provide that "the determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission shall prima facie establish the classification of a nonimmigrant defined in section 101(a)(15)(A) of the Act." (8 CFR 214.2(a))

⁸ See ch. 33, § 18.

⁹ See chs. 35 and 45.

government official or employee employing him describing the current and intended employment of the alien. (Form I-539, Instructions)

CHAPTER 19

INTERNATIONAL ORGANIZATION ALIENS

SECTION.

1. Definition.
 - (a) International organization aliens.
 - (b) Attendants, servants, and personal employees.
 - (c) Members of immediate family.
2. Significance of "G" visa.
3. Conditions of classification.
4. Special conditions and requirements.
 - (a) Passport requirement.
 - (b) Notification of international organization aliens to Department of State.
 - (c) Exemption from exclusion and deportation provisions.
 - (d) Application for extension of temporary stay by attendant, servant, or personal employee.
5. Public international organizations.

§ 1. **Definition.**—Nonimmigrant classification is accorded an alien falling within one of the following five classes of international organization aliens:

(1) A designated principal resident representative of a foreign government recognized *de jure* by the United States, which foreign government is a member of an international organization entitled to enjoy the privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, accredited resident members of the staff of such representatives, and members of his or their immediate families (visa symbol "G-1");¹

(2) Other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families (visa symbol "G-2");

(3) An alien able to qualify under (1) or (2) above except for the fact that the government of which such alien is an accredited representative is not recognized *de jure* by

¹ The International Organizations Immunities Act (Act of December 12, 1945) provides in § 7 (a) as follows:

"Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employees residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, and the registration of foreign agents, be entitled to the same privileges, exemptions and immunities as are accorded under similar circumstances to officers, employees, respectively, of foreign governments, and members of their families." (59 Stat. 669)

the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family (visa symbol "G-3") ;

(4) Officers and employees of such international organizations, and the members of their immediate families (visa symbol "G-4") ;

(5) Attendants, servants, and personal employees of any such representative, officer, or employee, listed under (1) to (4), and the members of the immediate families of such attendants, servants, and personal employees (visa symbol "G-5"). (Section 101(a)(15)(G) and 22 CFR 41.12)

(a) International organization aliens. An international organization alien is "accredited" only if he holds an official position, other than honorary official position, with the government or international organization he represents, and is in possession of a travel document or other evidence showing that he seeks to enter, or pass in transit through, the United States for the purpose of transacting official business for that government or international organization. (22 CFR 41.1)

(b) Attendants, servants, and personal employees. "Attendants" are aliens who are paid from the public funds of a foreign government or from the funds of an international organization and are accompanying or following to join the principal alien to whom they owe a duty or service and from whom they derive their status. (22 CFR 41.1)

"Servants" and "personal employees," as distinguished from "attendants," are aliens who are employed in a domestic or personal capacity by an international organization alien from whom they derive their status and who seek to enter the United States solely for the purpose of such employment. (22 CFR 41.1)

(c) Members of immediate family. Members of the immediate family of an international organization alien, an attendant, servant, or personal employee, are close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, and who will reside regularly in the household of the international organization alien, attendant, servant, or personal employee from whom they derive their status. (22 CFR 41.1)

§ 2. Significance of "G" visa.—A "G" visa issued to an alien is prima facie evidence of his proper classification when presented to the immigration authorities at a port of entry. (22 CFR 41.14 and 8 CFR 214.2(g))

§ 3. Conditions of classification.—An alien may be classified in one of the five categories of international organization aliens if he seeks to enter, or pass in transit through, the United States in pursuance of his official duties. (22 CFR 41.50(a)) Such an alien who wishes to enter the United States for personal or other private business or for pleasure may not be classified as an international organization alien but must establish his qualification for one of the other nonimmigrant classifications.

An alien who applies for a visa as an international organization alien is not required to be a national of the country whose government he represents. (22 CFR 41.50(b))

An alien who seeks to enter the United States as a foreign government representative to an international organization, and who, at the same time, is proceeding to the United States on official business as a foreign government official as described in Chapter 18, is issued an "A" visa if qualified therefor. If an alien who is entitled to classification as an international organization alien appears also eligible for another nonimmigrant classification other than that of a foreign government official, he is classified as an international organization alien. (22 CFR 41.50(c) and (d))

§ 4. Special conditions and requirements.

(a) **Passport requirement.** An alien who applies for admission into the United States holding a "G-1," "G-2," "G-3" or "G-4" visa is required to present a passport which is valid and unexpired only on the date of his application for admission to the United States. (Section 102, 22 CFR 41.91(f)(2) and 8 CFR 212.1) The passport of an alien classified "G-5" must meet the general validity requirements.²

(b) **Notification of international organization aliens to Department of State.** The International Organizations Immunities Act provides that no person is entitled to its benefits unless he (1) has been duly notified to and accepted by the Secretary of State as a representative, officer, or employee; or (2) has been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite,

² See ch. 33, § 18. The provisions of the Headquarters Agreement with the United Nations relating to the responsibilities of the United States in connection with the transit of aliens to or from the headquarters district are reproduced in ch. 27, footnote 4, as are the reservations concerning the security of the United States stipulated in Annex 2 to the Act of August 4, 1947.

or servant, of one of the foregoing accepted designated representatives, officers, or employees.³

(c) **Exemption from exclusion and deportation provisions.** International organization aliens of the five classes described above are exempt from certain grounds of inadmissibility; those classified "G-1" who fail to maintain their status may not be deported without the approval of the Secretary of State.⁴

(d) **Application for extension of temporary stay by attendant, servant, or personal employee.** An attendant, servant, or personal employee of an international organization alien who applies for an extension of his temporary stay must attach to his application a written statement from the representative, officer, or employee of the international organization describing the current and intended employment of the alien. (Form I-539, Instructions)

§ 5. Public international organizations.—The term "international organization" means any public international organization which has been designated by the President by executive order as being entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act. (22 CFR 41.1) As of July 1, 1960, the following international organizations have been so designated by the President:

Caribbean Commission
(Executive Order No. 10025 of December 30, 1948)
Food and Agriculture Organization
(Executive Order No. 9698 of February 19, 1946)
Inter-American Defense Board
(Executive Order No. 10228 of March 26, 1951)
Inter-American Development Bank
(Executive Order No. 10873 of April 8, 1960)
Inter-American Institute Agricultural Sciences
(Executive Order No. 9751 of July 11, 1946)
Inter-American Statistical Institute
(Executive Order No. 9751 of July 11, 1946)
Intergovernmental Maritime Consultative Organization
(Executive Order No. 10795 of December 13, 1958)
International Atomic Energy Agency
(Executive Order No. 10727 of August 31, 1957)
International Bank for Reconstruction and Development
(Executive Order No. 9751 of July 11, 1946)
International Civil Aviation Organization
(Executive Order No. 9863 of May 31, 1947)

³ Section 8(a) of Act of December 29, 1945 (59 Stat. 672; 22 U.S.C. 288(e)).

⁴ See chs. 35 and 45.

- International Cotton Advisory Committee
(Executive Order No. 9911 of December 19, 1947)
- International Finance Corporation
(Executive Order No. 10680 of October 5, 1956)
- International Hydrographic Bureau
(Executive Order No. 10769 of May 29, 1958)
- International Joint Commission—United States and Canada
(Executive Order No. 9972 of June 25, 1948)
- International Labor Organization
(Executive Order No. 9698 of February 19, 1946)
- International Monetary Fund
(Executive Order No. 9751 of July 11, 1946)
- International Refugee Organization
(Executive Order No. 9887 of August 22, 1947)
- International Telecommunication Union
(Executive Order No. 9863 of May 31, 1947)
- International Wheat Advisory Committee⁵
(Executive Order No. 9823 of January 24, 1947)
- Organization for European Economic Cooperation
(Executive Order No. 10133 of June 27, 1950)
- Organization of American States
(Executive Order No. 10533 of June 3, 1954)
- Pan American Health Organization⁶
(Executive Order No. 10864 of February 18, 1960)
- Pan American Union
(Executive Order No. 9698 of February 19, 1946)
- Provisional Intergovernmental Committee for the Movement of Migrants from Europe⁷
(Executive Order No. 10335 of March 28, 1952)
- Southeast Asia Treaty Organization
(Executive Order No. 10866 of February 23, 1960)
- South Pacific Commission
(Executive Order No. 10086 of November 25, 1949)
- United Nations
(Executive Order No. 9698 of February 19, 1946)
- United Nations Educational, Scientific, and Cultural Organization
(Executive Order No. 9863 of May 31, 1947)
- Universal Postal Union
(Executive Order No. 10727 of August 31, 1957)
- World Health Organization
(Executive Order No. 10025 of December 30, 1948)
- World Meteorological Organization
(Executive Order No. 10676 of September 1, 1956)

⁵ Now known as the International Wheat Council.

⁶ This designation includes the Pan American Sanitary Bureau previously designated by Executive Order No. 9751 of July 11, 1946, which was superseded by Executive Order No. 10864.

⁷ Now known as the Intergovernmental Committee for European Migration.

CHAPTER 20

NATO REPRESENTATIVES, OFFICIALS AND EMPLOYEES

SECTION.

1. The effect of the North Atlantic Treaty and related instruments on the immigration laws.
 - (a) The Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces.
 - (b) The Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff.
 - (c) The Protocol on the Status of International Military Headquarters, set up pursuant to the North Atlantic Treaty.
2. Parties to North Atlantic Treaty and related instruments.
3. Immigration status of aliens under the Status-of-Forces Agreement.
 - (a) Members of force and dependents.
 - (b) Members of civilian component and dependents.
 - (c) Qualification of Senate consent to the ratification of Status-of-Forces Agreement.
4. Immigration status of aliens under the Protocol on the Status of International Military Headquarters.
 - (a) Members of force and dependents.
 - (b) Members of civilian component and dependents.
5. Immigration status of national representatives and international staff under the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff.
 - (a) Principal permanent representatives and staff.
 - (b) Other representatives.
 - (c) Official clerical staff.
 - (d) International staff.
 - (e) Experts.
 - (f) Attendants, servants, and personal employees of NATO representatives and international staff.
6. Significance of "NATO" visa.

§ 1. The effect of the North Atlantic Treaty and related instruments on the immigration laws.—The North Atlantic Treaty between the United States and other governments¹ calls on the parties to the treaty to "encourage economic collaboration between any or all of them" and to "maintain and develop their individual and collective capacity to resist armed attack."

In implementation of these and other provisions of the Treaty the following instruments of agreement have been concluded which affect the immigration laws of the United States:

¹ Signed at Washington on April 4, 1949, proclaimed by the President of the United States, and entered into force on August 24, 1949 (63 Stat. 2241).

(a) **The Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces.**² This so-called Status-of-Forces Agreement contains provisions relating to the entry and departure of a force or the members thereof on entering or leaving the territory of a receiving State, as well as provisions affecting the entry of members of a civilian component and their dependents;

(b) **The Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff.**³ This agreement contains provisions affecting the entry of the national representatives and international staff of the North Atlantic Treaty Organization; and

(c) **The Protocol on the Status of International Military Headquarters, set up pursuant to the North Atlantic Treaty.**⁴ This protocol defines the status of members of the staff of any Supreme Headquarters or Allied Headquarters which may be established in the territory of any of the parties to the North Atlantic Treaty.

§ 2. Parties to North Atlantic Treaty and related instruments.

—Parties to the North Atlantic Treaty are the following countries:

Belgium	Italy
Canada	Luxembourg
Denmark	Netherlands
Federal Republic of Germany	Norway
France	Portugal
Greece	Turkey
Iceland	United Kingdom
	United States of America.

The Status-of-Forces Agreement has been ratified by the same countries with the exception of Germany and Iceland. The Agreement on the Status of North Atlantic Treaty Organization, National Representatives, and International Staff has been ratified by all countries signatory to the North Atlantic Treaty. The Protocol on the Status of International Military Headquarters has been ratified by the signatory powers except Canada, Germany, and the United Kingdom.

² Signed at London on June 19, 1951, entered into force on August 23, 1953, and proclaimed by the President of the United States on October 27, 1953 (4 UST 1792).

³ Signed at Ottawa on September 20, 1951, entered into force on May 18, 1954, and proclaimed by the President of the United States on June 7, 1954 (5 UST 1087).

⁴ Signed at Paris on August 28, 1952, entered into force on April 10, 1954, and proclaimed by the President of the United States on June 7, 1954 (5 UST 870).

§ 3. Immigration status of aliens under the Status-of-Forces Agreement.

(a) **Members of force and dependents.** Article III of the Status-of-Forces Agreement contains the following provisions concerning the documentation and admission of a force or the members of a force:

"1. On the conditions specified in paragraph 2 of this Article and subject to compliance with the formalities established by the receiving State relating to entry and departure of a force or the members thereof, such members shall be exempt from passport and visa regulations and immigration inspection on entering or leaving the territory of a receiving State. They shall also be exempt from the regulations of the receiving State on the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in the territories of the receiving State.

"2. The following documents only will be required in respect of members of a force. They must be presented on demand:

"(a) personal identity card issued by the sending State showing names, date of birth, rank and number (if any), service, and photograph;

"(b) individual or collective movement order, in the language of the sending State and in the English and French languages, issued by an appropriate agency of the sending State or of the North Atlantic Treaty Organization and certifying to the status of the individual or group as a member or members of a force and to the movement ordered. The receiving State may require a movement order to be countersigned by its appropriate representative."⁵

Article I defines the term "force" as follows:

"'force' means the personnel belonging to the land, sea or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connexion with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units or formations shall not be regarded as constituting or included in a 'force' for the purposes of the present Agreement."⁶

As a result of these treaty obligations, visa regulations exempt members of a force from the passport and visa requirement as described in Section 3 of Chapter 29.⁷ (22 CFR 41.70(a)(2) and 41.5(d))

These privileges, however, do not extend to the dependents⁸ of a member of a force. They are subject to the grounds of

⁵ 4 UST 1796.

⁶ 4 UST 1794.

⁷ If a member of a force desires to be issued a visa, he is issued a "NATO-2" visa. (22 CFR 41.70(a)(2))

⁸ The term "dependent" is defined in Article I of the Status-of-Forces Agreement as relating to "the spouse of a member of a force . . . , or a child of such a member depending on him or her for support." (5 UST 877, 1094)

inadmissibility contained in Section 212(a)(27) and (29)⁹ and to the passport and visa requirement. They are classifiable "NATO-2." The validity of a passport held by "NATO-2" aliens is not required to extend beyond the date of their application for admission. (22 CFR 41.12, 41.70(a)(3), 41.91(e)(2)(viii) and 41.91(f)(3))

(b) Members of civilian component and dependents. Article I of the Status-of-Forces Agreement defines the term "civilian component" as follows:

"'Civilian component' means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service of that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located."¹⁰

Members of a civilian component and their dependents¹¹ are subject to the passport and visa requirement and to the grounds of inadmissibility contained in Section 212(a)(27) and (29). They are classifiable "NATO-6." The validity of a passport held by "NATO-6" aliens is not required to extend beyond the date of their application for admission. (22 CFR 41.12, 41.70(b), 41.91(e)(2)(viii) and 41.91(f)(3))

(c) Qualification of Senate consent to the ratification of Status-of-Forces Agreement. In evaluating the treaty obligations concerning the immigration status of aliens under the Status-of-Forces Agreement it should be noted that the Senate did advise and consent to the ratification of this agreement with the following statement:

"It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of the Agreement, that nothing in the Agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States."¹²

§ 4. Immigration status of aliens under the Protocol on the Status of International Military Headquarters.

(a) Members of force and dependents. Personnel attached to an Allied Headquarters in the United States set up pursuant

⁹ See ch. 33, §§ 6, 27.

¹⁰ 4 UST 1794.

¹¹ The term "dependent" is defined in Article I of the Status-of-Forces Agreement as "the spouse of a member . . . of a civilian component, or a child of such member depending on him or her for support." (4 UST 1794)

¹² 4 UST 1828.

to the North Atlantic Treaty, who belong to the land, sea, or air armed services of any Party to the North Atlantic Treaty, referred to as "force,"¹³ and who are entering the United States in connection with their official duties under the provisions of the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, are exempt from the passport and visa requirement. (22 CFR 41.5(e))¹⁴

This privilege, however, does not extend to the dependents of such personnel.¹⁵ They are subject to the grounds of inadmissibility contained in Section 212(a)(27) and (29)¹⁶ and to the passport and visa requirement. They are classifiable "NATO-2." The validity of a passport held by "NATO-2" aliens is not required to extend beyond the date of their application for admission. (22 CFR 41.12, 41.70(a)(3), 41.91(e)(2)(viii) and 41.91(f)(3))

(b) Members of civilian component and dependents. Article 3 of the Protocol on the Status of International Military Headquarters defines "civilian component" as:

"civilian personnel who are not stateless persons, nor nationals of any State which is not a Party to the Treaty, nor nationals of, nor ordinarily resident in the receiving State, and who are (i) attached to the Allied Headquarters and in the employ of an armed service of a Party to the North Atlantic Treaty or (ii) in such categories of civilian personnel in the employ of the Allied Headquarters as the North Atlantic Council shall decide."¹⁷

Members of a civilian component and their dependents, i.e., the spouse of a member or a child of a member depending on him or her for support, are subject to the grounds of inadmissibility contained in Section 212(a)(27) and (29) and to the passport and visa requirement. They are classifiable "NATO-6." The validity of a passport held by "NATO-6" aliens is not required to extend beyond the date of their application for admission. (22 CFR 41.12, 41.70(b), 41.91(e)(2)(viii) and 41.91(f)(3))

¹³ Article 3(1)(a) of the Protocol on the Status of International Military Headquarters, set up pursuant to the North Atlantic Treaty. (5 UST 877)

¹⁴ See also ch. 29, § 3. If a member of a force desires to be issued a visa, he is issued a "NATO-2" visa. (22 CFR 41.70(a)(2))

¹⁵ The term "dependent" means the spouse of a member of a force or a child of such member depending on him or her for support. (Article 3 of Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, 5 UST 877)

¹⁶ See ch. 33, §§ 26, 27.

¹⁷ 5 UST 877.

§ 5. Immigration status of national representatives and international staff under the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff.

(a) **Principal permanent representatives and staff.** Article 12 of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, hereafter referred to as "Agreement," provides:

"Every person designated by a Member State as its principal permanent representative to the Organisation in the territory of another Member State, and such members of his official staff resident in that territory as may be agreed between the State which has designated them and the Organisation and between the Organisation and the State in which they will be resident, shall enjoy the immunities and privileges accorded to diplomatic representatives and their official staff of comparable rank."¹⁸

In implementation of this provision, visa regulations provide that the principal permanent representative of a Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of his official staff and members of their immediate families are subject only to the grounds of inadmissibility contained in Section 212(a) (27). They are classifiable "NATO-1." The validity of a passport held by "NATO-1" aliens is not required to extend beyond the date of their application for admission. (22 CFR 41.12, 41.70 (a) (1), 41.91(e) (2) (vii) and 41.91(f) (3))

(b) **Other representatives.** Article 13 of the Agreement provides in part:

"Any representative of a Member State to the Council or any of its subsidiary bodies who is not covered by Article 12 shall, while present in the territory of another Member State for the discharge of his duties, enjoy the following privileges and immunities:

"(e) the same exemption in respect of himself and his spouse from immigration restrictions, aliens registration and national service obligations as that accorded to diplomatic personnel of comparable rank."¹⁹

In implementation of this provision, visa regulations provide that representatives of Member States to NATO (including any of its subsidiary bodies), other than those listed under (a) and including representatives, advisers, and technical experts of delegations, and members of their immediate families, are subject only to the grounds of inadmissibility contained in Section 212(a) (27) and (29). They are classifiable "NATO-2." The validity of a passport held by "NATO-2" aliens is not required

¹⁸ 5 UST 1094.

¹⁹ 5 UST 1094.

to extend beyond the date of their application for admission. (22 CFR 41.12, 41.70(a) (1), 41.91(e) (2) (viii) and 41.91(f) (3))

(c) **Official clerical staff.** Article 14 of the Agreement accords the official clerical staff accompanying a representative of a Member State the same privileges as provided in Article 13 and quoted under (b).²⁰ As a result, the official clerical staff accompanying a representative of a Member State to NATO (including any of its subsidiary bodies) and members of the immediate family are subject only to the grounds of inadmissibility contained in Section 212(a) (27) and (29). They are classifiable "NATO-3." The validity of a passport held by "NATO-3" aliens is not required to extend beyond the date of their application for admission. (22 CFR 41.12, 41.91(e) (2) (viii) and 41.91(f) (3))

(d) **International staff.** The international staff of NATO, together with their spouses and members of their immediate families residing with and dependent on them, are granted the same immunities from immigration restrictions and alien registration as is accorded to diplomatic personnel of comparable rank. In addition, the Executive Secretary of NATO, the Co-ordinator of North Atlantic Defence Production, and such other permanent officials of similar rank as may be agreed between the chairman of the Council Deputies and the Governments of Member States are accorded the privileges and immunities normally accorded to diplomatic personnel of comparable rank. (Articles 18 and 20 of Agreement)²¹

In implementation of these provisions, visa regulations provide that the Secretary General, Deputy Secretary General, Assistant Secretaries General, and Executive Secretary of NATO, other permanent NATO officials of similar rank and the members of their immediate families are subject only to the grounds of inadmissibility contained in Section 212(a) (27). They are classifiable "NATO-1." (22 CFR 41.12, 41.70(a) (1), and 41.91(e) (2) (vii)) Other officials of NATO and members of their immediate families are subject to the grounds of inadmissibility contained in Section 212(a) (27) and (29). They are classifiable "NATO-4." (22 CFR 41.12, 41.70(a) (1) and 41.91(e) (2) (viii)) The validity of a passport held by an alien in class "NATO-1" or "NATO-4" is not required to extend beyond the date of his application for admission. (22 CFR 41.91(f) (3))

(e) **Experts.** Experts employed on missions on behalf of NATO, other than NATO officials classifiable "NATO-1" or

²⁰ 5 UST 1096.

²¹ 5 UST 1098.

"NATO-4," are classifiable "NATO-5." (22 CFR 41.12) Article 21 of the Agreement which regulates the status of NATO experts does not confer on them any immigration privileges.²² Consequently, an alien in class "NATO-5" may not be issued a visa unless he meets all the qualitative tests applicable to non-immigrants in general as set forth in Section 212(a) and described in Chapter 33.

(f) **Attendants, servants, and personal employees of NATO representatives and international staff.** Attendants, servants, and personal employees of aliens in the "NATO-1," "NATO-2," "NATO-3," "NATO-4," "NATO-5" or "NATO-6" classes, and members of their immediate families, are classifiable "NATO-7." (22 CFR 41.12 and 41.70(c)) The pertinent provisions of the Agreement confer on these aliens the same immunities from immigration restrictions as is accorded to diplomatic personnel of comparable rank. (Articles 12, 13, 14, 18)²³ The Immigration and Nationality Act exempts aliens with comparable diplomatic rank only from the provisions of Section 212(a)(28). Aliens within the prohibition of this section are not contemplated to be employees of national representatives or international staff of NATO. Consequently, an alien in class "NATO-7" may not be issued a visa unless he meets all the qualitative tests applicable to nonimmigrants in general as set forth in Section 212(a) and described in Chapter 33.

§ 6. Significance of "NATO" visa.—A visa issued under the symbols "NATO-1" through "NATO-7" is prima facie evidence of the proper classification of the alien when presented to the immigration authorities at a port of entry. (22 CFR 41.14) Aliens classified "NATO-1," "NATO-2," "NATO-3," "NATO-4" and "NATO-6" are exempt from certain grounds of inadmissibility as stated above and as summarized in Chapter 35, Section 2.

²² 5 UST 1100.

²³ 5 UST 1094, 1096, 1098.

CHAPTER 21

TEMPORARY VISITORS FOR BUSINESS OR PLEASURE

SECTION.

1. Definition.
2. Evidence of temporary visitor status.
3. Temporary visitor for business.
 - (a) Business visitor and immigrant.
 - (b) Business visitor and temporary worker.
4. Temporary visitor for pleasure.

§ 1. Definition.—Nonimmigrant classification is accorded:

“an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as representative of foreign press, radio, film or other information media coming to engage in such vocation), having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.” (Section 101(a)(15)(B))

Thus, a temporary visitor may enter the United States either for business or for pleasure. A visitor for business is given the visa symbol “B-1” and a visitor for pleasure the symbol “B-2.” (22 CFR 41.12)¹

§ 2. Evidence of temporary visitor status.—An alien is classifiable as a visitor for business or pleasure if he establishes to the satisfaction of the consular officer that:

(a) he has a residence in a foreign country which he has no intention of abandoning;²

(b) he is not classifiable as a student, temporary worker, or member of foreign press, radio, film, or other information medium;

(c) he is proceeding to the United States temporarily for business or pleasure;

(d) he intends to depart from the United States at the expiration of his temporary stay;

(e) he has permission to enter some foreign country upon the termination of his temporary stay; and

¹ The “exchange visitor” who seeks admission to the United States under the United States Information and Educational Exchange Act of 1948, as amended, is discussed in ch. 23.

² See ch. 5 for definition of term “residence.”

(f) adequate financial provisions have been made to enable him to carry out the purpose of his visit and to travel to, sojourn in, and depart from the United States. (Section 101(a) (15) (B) and 22 CFR 41.25(a))

§ 3. Temporary visitor for business.—A visitor for business is required to seek admission into the United States for legitimate activities of a commercial or professional character, other than purely local employment or labor for hire. An alien seeking to enter for temporary employment or labor pursuant to a contract or other prearrangement is required to qualify as a temporary worker. However, an alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, is classifiable as a nonimmigrant temporary visitor for business. (22 CFR 41.25(b)) Purely local employment or labor for hire is not considered "business" as contemplated here.

In interpreting the term "business" as used in Section 3(2) of the Immigration Act of 1924, the predecessor statute to Section 101(a) (15) (B), the Supreme Court held that it is limited in application to intercourse of a commercial character, on the reasoning that Congress did not intend to admit aliens temporarily for business to engage in labor for hire in competition with American workers.³

(a) **Business visitor and immigrant.** In determining whether an alien is classifiable as a visitor for business, rather than as an immigrant, the Board of Immigration Appeals has stressed the following considerations:

(1) There is present a clear intent on the part of the alien applicant to continue his foreign residence and not to abandon his existing domicile;

(2) the principal place of business and the actual place of eventual accrual of profits are predominantly in a foreign country;

(3) while the business activity itself need not be temporary, and may be long continued, the various entries into the United States made in the course thereof must be individually or separately of a plainly temporary nature, in keeping with existence of the two preceding considerations.⁴

³ *Karnuth v. United States, ex rel. Albro*, 279 U. S. 231, 241, 73 L. ed. 677, 49 Sup. Ct. 274 (1929).

⁴ BIA, *In the Matter of B. and K.*, 6, I. & N. Dec. 827, December 28, 1955; also Central Office, *In the Matter of G. P.*, 4, I. & N. Dec. 217, December 28, 1950.

In other decisions the Board held that the business for which the alien is coming must be temporary and not continuing or permanent in character, and that not only the visit but the business must be of a temporary character.⁵ It referred to a series of decisions in which it was held that the business was not of a temporary nature when the applicant, while continuing to reside in foreign contiguous territory, sought to enter daily to operate a restaurant in the United States; to peddle Mexican produce; to sell Canadian bread to retailers and consumers; or where entry was desired several times weekly to continue a business of ten years' standing to sell and deliver to 340 subscribing customers in the United States 600 magazines each week of a foreign publication. In the latter case the regularity and permanence of the activity precluded a finding that the business was temporary. In another decision the Board held that a resident of Canada who is paid by a Canadian firm for work in the United States eight hours a day, five days a week, must be considered an immigrant.⁶ While it was recognized that this alien had a residence in a foreign country which he had no intention of abandoning, he earned his salary entirely while employed in the United States on work that is of a continuing nature at a fixed and permanent place.⁷

In interpreting the predecessor provision to Section 101(a)(15)(B), the Board of Immigration Appeals held that an alien coming to this country for a temporary stay must be considered an immigrant when the work he intends to engage in is of a permanent rather than of a temporary nature.⁸

⁵ BIA, *In the Matter of M.*, 6, I. & N. Dec. 533, March 8, 1955, and decisions listed therein.

⁶ BIA, *In the Matter of G.*, 6, I. & N. Dec. 255, July 29, 1954. The Board recognized the fluidity of its interpretation when it said: "The rationale of the decisions is sometimes not clear, but an attempt has been made to decide the cases in harmony with considerations laid down above." (BIA, *In the Matter of B. and K.*, 6, I. & N. Dec. 827, 830, December 28, 1955)

⁷ A Canadian citizen, residing in Canada, who is employed as a truck driver by a Detroit firm but paid wages in Canadian funds for buying fish in Canada or picking up fish previously purchased by his employer by telephone and delivering it to his employer in the United States, and who does no unloading, is eligible for nonimmigrant status under § 101(a)(15)(B) since his activities in transporting the fish are incidental to international trade or commerce. (BIA, *In the Matter of W.*, 6, I. & N. Dec. 832, December 28, 1955)

Employee of Canadian firm who comes to United States about four times a year for 2-week periods to sell plastic bags to United States customers is eligible for admission as nonimmigrant visitor for business where his employer's principal place of business is in Canada, the accrual of profits from his work takes place in Canada, his commissions from sales in the United States are a minor part of his over-all income, and each of his entries is plainly of a temporary nature. (BIA, *In the Matter of P.*, Interim Decision 966, December 3, 1958)

⁸ BIA, *In the Matter of M.*, 2, I. & N. Dec. 240, January 19, 1945. A departure from the doctrine that the permanent nature of the work an alien intends to engage in temporarily requires his classification as an immigrant will be found in the recommendation

(b) **Business visitor and temporary worker.** Whether an alien who is coming to the United States to perform certain temporary services is to be classified as a visitor for business or as a temporary worker⁹ depends to some extent on where he receives a salary for these services. If the alien receives abroad a salary for his services but does not receive in the United States any remuneration other than a subsistence allowance and reimbursement for other expenses incidental to his temporary stay in the United States, he may be classified as a visitor for business. However, this classification is not accorded to an alien who is coming to the United States to participate in exhibitions, concerts or other performances for which admission is charged to the general public or who is an industrial trainee. For example, an alien who is coming to the United States to do repair work on machinery imported into the United States may be given a "B-1" classification if he does not receive a salary in the United States but continues to draw his salary abroad, if employed, or is coming to the United States under the terms of a service contract between an American importer and a foreign exporter. On the other hand, a baseball player who is to participate in a game to which admission is charged in the United States may not be classified as a visitor for business even if he receives his salary abroad. Such alien is classified as a temporary worker. Likewise, a member of an orchestra is to be classified as a temporary worker, regardless of the fact that he receives his salary abroad, if an admission is charged in the United States for the concert performance in which he participates. However, an alien who participates in an exhibition, concert or other performance as a bona fide amateur without receiving a salary either abroad or in the United States may be classified as a visitor for pleasure.

Examples of applicants who, considering other factors, may be classified as visitors for business are:

- (1) Visitors entering for the purpose of attending business conferences or negotiating business contracts;
- (2) Personal and domestic servants who accompany or follow to join alien employers admitted as nonimmigrants;

by a subcommittee of the House Judiciary Committee "that the problem of supplying legitimate needs (for alien sheepherders) of the American sheep-raising and woolgrowing industry should be met administratively under existing general law, specifically, under section 101(a)(15)(H)(ii), of the Immigration and Nationality Act . . ." ("Spanish Sheepherders," House Report No. 67 of February 14, 1957, 85th Congress, First Session, p. 4) For a discussion of "commuters," i.e., aliens lawfully admitted for permanent residence who continue to retain their place of residence in Canada or Mexico while commuting to their place of employment in the United States, see ch. 7, § 3(d).

⁹ See ch. 26.

(3) Exchange teachers and clergymen, not seeking admission under an exchange visitor program, who will be reimbursed by their home church or school and will draw no salary from the host church or school in the United States;

(4) Those coming to perform noncompetitive temporary services, other than as industrial trainees, for which no salary or other remuneration, except a subsistence allowance and reimbursement for other expenses incidental to their temporary stay, is paid by United States employers or sponsors;

(5) Professional athletes coming to participate in tournaments or contests and who will receive no salary or payment other than prize money;

(6) Personnel of airlines engaged solely in international transportation of passengers and freight who seek to enter the United States to perform temporary services for their airlines.¹⁰

§ 4. Temporary visitor for pleasure.—An alien is classified as a temporary visitor for pleasure if he seeks to enter:

(a) to engage in legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, and rest,

(b) to undergo medical treatment, or

(c) to engage in educational activities which do not require classification as a student, trainee, temporary worker, or exchange visitor. (22 CFR 41.25(c))

Examples of applicants who, considering other factors, may be classified as visitors for pleasure are:

(1) Tourists;

(2) Applicants desiring to make social visits to relatives and friends;

(3) Those entering for educational purposes other than formal class instruction or training;

(4) Applicants who desire to enter for purposes of health;

(5) Those entering to attend educational, fraternal, religious and scientific conventions or convocations;

¹⁰ Visa Office Bulletin No. 48, November 2, 1959.

(6) Applicants who desire to attend one or two courses at a school as an incidence of a visit primarily made for another approved purpose;

(7) Amateur sportsmen, musicians or entertainers.¹¹

Under no circumstances are aliens admitted as temporary visitors for pleasure permitted to work.¹²

¹¹ Visa Office Bulletin No. 48, November 2, 1959.

¹² Senate Report No. 1137, 82nd Congress, Second Session, p. 19.

CHAPTER 22

STUDENTS

SECTION.

1. Definition.
2. Conditions of student classification.
 - (a) Acceptance by approved school.
 - (b) Support.
 - (c) Scholastic preparation.
 - (d) Bona fide nonimmigrant intent.
3. Student of English language.
4. Official student.
5. Admission and readmission of student.
6. Employment of students.
 - (a) Employment for practical training.
 - (b) Employment for support.
 - (c) Summer employment.
7. Transfer from one school to another.
8. Spouses and children of students.
9. Approved schools.
 - (a) Application for approval.
 - (b) Agreement by school.
 - (c) Approval of certain recognized institutions.
 - (d) Approval of other institutions.
 - (e) Decision on petition for approval.
 - (f) Withdrawal of approval.

§ 1. Definition.—Nonimmigrant classification as a student is accorded an alien having:

“a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him and approved by the Attorney General after consultation with the Office of Education of the United States.” (Section 101(a) (15) (F))

An alien student is given the visa symbol “F.” (22 CFR 41.12)

§ 2. Conditions of student classification.—An alien applying for classification as a nonimmigrant student, in addition to complying with the statutory requirements set forth in Section 1, must meet the following conditions:

(a) **Acceptance by approved school.** He must show that he will attend, and has been accepted for attendance in a full

course of study by, an established institution of learning or other recognized place of study in the United States which has been approved by the Attorney General. Such acceptance is shown by the presentation of Form I-20, "Certificate of Eligibility," executed by the accepting school and signed by the student. Presentation of Form I-20, when properly executed, will be accepted by the consular officer as *prima facie* evidence that the designated institution has been approved by the Attorney General for the attendance of nonimmigrant students, and that the visa applicant has been accepted by the institution. (22 CFR 41.45(a))

Whether a program of study is to be considered a "full course of study" is determined and certified by the institution of learning or recognized place of study. No minimum requirement as to semester hours has been established by the Immigration and Naturalization Service. (22 CFR 41.45(a)(1) and Form I-20)

(b) Support. He must show that he is in possession of sufficient funds to cover his expenses, or other arrangements have been made to provide for his expenses. (22 CFR 41.45(a)(2)) Proof that, prior to his admission, employment has been arranged for an applicant for a student visa, as a rule, is not acceptable as proof that arrangements have been made to provide for the student's expenses. An exception applies in the case of a student if arrangements for part-time employment on the campus have been made with the accepting institution of learning.¹ (Form I-20)

(c) Scholastic preparation. He has to show that he has sufficient scholastic preparation and knowledge of the English language to enable him to undertake a full course of study in the institution of learning or other place of study by which he has been accepted. If the student's knowledge of the English language is inadequate to enable him to pursue a full program of study he must show that the approved school or other recognized place of study is equipped to offer, and has accepted him expressly for, a full program of study in a language with which he is sufficiently familiar, or that special arrangements have been made for tutoring him in the English language and that he will be able, with the assistance of such tutoring, to undertake a full course of study. (22 CFR 41.45(a)(3))

(d) Bona fide nonimmigrant intent. He must show that he intends in good faith, and will be able, to depart from the United

¹ See § 6 concerning employment of student after admission.

States upon the termination of his student status. (22 CFR 41.45(a)(4))²

§ 3. Student of English language.—An alien who intends to study the English language exclusively while in the United States may be classified as a nonimmigrant student even though no credits are given by the institution of learning for such study, if he is otherwise qualified for classification as a nonimmigrant student. In such case the approved school must be equipped to offer a full course of study in the English language and must have accepted the applicant expressly for that course. (22 CFR 41.45(b))

§ 4. Official student.—The fact that an alien has been selected by his government to study at an institution of learning or other place of study in the United States does not in itself bring him within the "A" classification of a foreign government official. Such alien, if otherwise qualified, is to be classified as an "F" student or as a "J" exchange visitor, whichever applicable, unless he is accredited and accepted as a foreign government official. In the latter case he is classifiable as an "A-2" foreign government official.

§ 5. Admission and readmission of student.—Every alien applying to the Immigration and Naturalization Service for admission into the United States as a student must present Form I-20, "Certificate of Eligibility," properly filled out by the school to which he is destined and personally executed by him on the reverse of the form. (8 CFR 214.2(f)) This requirement applies irrespective of whether the student may be exempted from the visa requirement as described in Chapter 29.

A student returning from a temporary absence may retain Form I-20 and use it for any number of reentries within six months from the date of issuance. After this period a student planning a temporary trip outside the United States must secure a new Form I-20 from his school. On his return he must not only be in possession of Form I-20 but also of a valid visa and passport. (8 CFR 214.2(f) and Form I-358, Special Instructions)

§ 6. Employment of students.

(a) Employment for practical training. Whenever employment for practical training is required or recommended by the institution or place of study attended by the applicant, the

² That applicant previously expressed desire to enter the United States as an immigrant and may still have such desire does not in itself preclude issuance of a nonimmigrant visa nor preclude his being a *bona fide* nonimmigrant. (Regional Commissioner, approved by Asst. Comm., *In the Matter of H. R.*, 7, I. & N. Dec. 651, February 18, 1958)

district director or officer in charge of the Immigration and Naturalization Service having administrative jurisdiction over the place in which the institution is located may permit employment of the alien for a six-month period subject to extension for not over two additional six-month periods. An extension, however, is granted only if the school and the training agency certify that the practical training cannot be completed in a shorter period of time. (Form I-20) Application for permission to accept employment must be filed on Form I-539.³

(b) **Employment for support.** No alien student may be employed for a wage or salary or engage in business while in the United States unless it is necessary for him to do so to defray partly his living expenses, and then only if permission to do so has been granted by the Immigration and Naturalization Service. In such case the student has to apply for permission to accept employment on Form I-539 and may not accept it unless informed of the approval of his application. A student permitted to accept employment due to economic necessity is required to terminate the employment when the need therefor ceases. Grant of permission to accept employment does not authorize a student to engage in employment where a strike or other labor dispute involving work stoppage or layoff of regular employees exists. A student must terminate employment immediately if such a condition arises at his place of employment. (Form I-20, Instructions on Form I-539, and Form I-358, Special Instructions) Permission to work will, as a rule, be granted if the student does not have sufficient means due to circumstances which have arisen since his admission to the United States and if the work will not interfere with his studies. However, a student will not be permitted to accept employment where there has been no change in his economic situation since his admission to the United States.⁴

(c) **Summer employment.** The Immigration and Naturalization Service has granted specific yearly authorization to certain schools to authorize summer employment for their alien students. In such case appropriate school officials may authorize summer vacation employment and furnish the student with a copy of Form I-539 after approval. (Instruction on Form I-539)

³ Permission to accept employment for practical training as instructor and research assistant will be granted to graduate chemical engineer while completing academic studies for another degree with the intention of pursuing career in teaching and research. (Regional Commissioner, *In the Matter of T.*, 7, I. & N. Dec. 682, March 10, 1958; approved by Asst. Comm.)

⁴ Regional Commissioner, *In the Matter of A.*, 7, I. & N. Dec. 661, February 27, 1958; approved by Asst. Comm.

§ 7. Transfer from one school to another.—A student is admitted only for the purpose of pursuing studies at a specified school, college, or other educational institution. If, after admission into the United States, a student desires to transfer to another school, college, or educational institution, he must make a written application for permission to make such a transfer to the immigration office having jurisdiction over his place of residence. (Form I-20)

§ 8. Spouses and children of students.—The spouse or child of a student does not derive nonimmigrant classification from him. They have to establish their qualification for nonimmigrant status in their own right.⁵

§ 9. Approved schools.

(a) **Application for approval.** Any institution of learning or place of study seeking approval for the attendance of alien students must file Form I-17, "Petition for Approval of School for Students," with the district director of the Immigration and Naturalization Service having administrative jurisdiction over the place in which it is located. The fee for filing this application is \$25. (8 CFR 214.3 and 103.7(c))

The petition for approval must be executed by the principal officer of the school authorized to execute contracts. A petition on behalf of a public school must be made by the School Board and signed by its president or chairman. (Form I-17, Instructions)

(b) **Agreement by school.** Any school submitting a petition for approval agrees thereby:

(1) to furnish Form I-20, "Certificate of Eligibility," to any student upon his acceptance;

(2) to file with the district director of the Immigration and Naturalization Service of the district in which the institution is located a report on each student upon his admission concerning his name, address, date of admission, course of study, and name and address of a friend or relative in the United States; and

(3) to file with the district director a report upon the termination of attendance of a student stating the date and reason of the termination of attendance and available information about the student's whereabouts and departure from the United States. (Form I-17)

⁵ For a fuller discussion see ch. 17, § 3.

(c) **Approval of certain recognized institutions.** Institutions of learning and other places of study in the United States within any of the following categories which execute the agreement on Form I-17 described under (b) are considered approved for the attendance of nonimmigrant students:

(A) Any public educational institution listed in the current issue of one of the following publications or lists:

(1) "Directory of Secondary Day Schools in the United States," U. S. Office of Education, Washington, D.C.

(2) Directories and official lists of public educational institutions issued by the State departments of education. In a State that does not publish all-inclusive public school directories or official lists, a statement over the signature of the local public school superintendent that any school is an approved or recognized part of that public school system will suffice to establish the school's approval.

(3) Education Directory, Part 3, "Higher Education," U.S. Office of Education (including privately controlled colleges and universities listed therein).

(4) "Accredited Higher Institutions," U.S. Office of Education (including privately controlled colleges and universities listed therein).

(B) Any secondary school which is operated by or as a part of an institution of higher learning listed in subparagraph (2), (3), or (4), of paragraph (A).

(C) Private and parochial elementary and secondary schools, if they meet any of the following conditions:

(1) The school is currently listed as accredited in the U.S. Office of Education publication "Directory of Secondary Day Schools in the United States."

(2) The school is currently listed in the education directory of the respective State department of education.

(3) The school is an elementary school related to an accredited secondary school.

(4) The school is certified by a responsible official of a State or local public education department or system as meeting the requirements of the State or local public educational system.

(d) **Approval of other institutions.** An institution other than one referred to under (c), in order to qualify for approval,

must be a bona fide institution of learning or recognized place of study and possess the necessary facilities for the instruction of students in recognized courses. If below college level, the institution must qualify its graduates for acceptance to accredited schools of higher educational level. If the institution is in the field of higher education it must confer upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees. If it does not confer such degrees, its credits must be recognized by, and transferable to, an institution which does confer such degrees. If the institution is a vocational or business school or an American institute of research recognized by the Attorney General, its courses of study must generally be accepted as fulfilling the requirements for the attainment of an educational, professional or vocational objective and must not be avocational or recreational in character. (Form I-17, Instructions)

(e) Decision on petition for approval. A decision on the application for approval is made by the district director after consultation with the Office of Education of the United States. The petitioner is notified of the decision. A decision denying approval may be appealed. (8 CFR 214.3)

(f) Withdrawal of approval. Whenever a district director having administrative jurisdiction over the place in which an approved institution of learning or place of study is located has reason to believe that it is no longer entitled to approval he will send a notice containing the reasons why it is proposed to withdraw the approval previously granted. The institution may submit within thirty days written representations, under oath, and supported by documentary evidence, setting forth the reasons why the approval should not be withdrawn. After consideration of the facts presented, the district director will notify the institution of its decision. If the decision is to withdraw the approval previously granted, the reasons for the decision will be stated, and the institution will be informed of its right to appeal. (8 CFR 214.3)

CHAPTER 23

EXCHANGE VISITORS

SECTION.

1. Definition.
2. Categories of exchange visitors.
3. Exchange visitor program application.
4. Action on application for exchange visitor program designation.
5. Notification to exchange visitors.
6. Visa application—Classification.
7. Condition of admission of exchange visitor.
8. Application for extension of stay.
9. Application for program transfer.
10. Temporary disqualification of exchange visitor as immigrant or temporary worker.
11. Application for change of status to exchange visitor from another non-immigrant status.

§ 1. Definition.—An exchange visitor is an alien who falls within one of the categories specifically named in Section 201 of the United States Information and Educational Exchange Act of 1948, as amended, who seeks to enter the United States temporarily and has been selected to participate in an exchange visitor program designated by the Secretary of State.¹ The

¹ Section 201 of the United States Information and Educational Exchange Act of 1948 (Act of January 27, 1948, 62 Stat. 6), as amended by the Immigration and Nationality Act (66 Stat. 163) and by the Act of June 4, 1956 (70 Stat. 241) provides:

"(a) The Secretary (of State) is authorized to provide for interchanges on a reciprocal basis between the United States and other countries of students, trainees, teachers, guest instructors, professors, and leaders in fields of specialized knowledge or skill and shall wherever possible, provide these interchanges by using the services of existing reputable agencies which are successfully engaged in such activity. The Secretary may provide for orientation courses and other appropriate services for such persons from other countries upon their arrival in the United States, and for such persons going to other countries from the United States. When any country fails or refuses to cooperate in such program on a basis of reciprocity the Secretary shall terminate or limit such program, with respect to such country, to the extent he deems to be advisable in the interests of the United States. The persons specified in this section shall be admitted as nonimmigrants, under § 101(a)(15) of the Immigration and Nationality Act, for such time and under such conditions as may be prescribed by regulations promulgated by the Secretary of State and the Attorney General. A person admitted under this section who fails to maintain the status under which he was admitted or who fails to depart from the United States at the expiration of the time for which he was admitted, or who engages in activities of a political nature detrimental to the interests of the United States, or in activities not consistent with the security of the United States, shall, upon the warrant of the Attorney General, be taken into custody and promptly deported pursuant to §§ 241, 242, and 243 of the Immigration and Nationality Act. Deportation proceedings under this section be summary and the findings of the Attorney General as to matters of fact shall be conclusive. Such persons shall not be eligible for suspension of deportation under § 244 of the Immigration and Nationality Act.

"(b) No person admitted as an exchange visitor under this section or acquiring exchange visitor status after admission shall be eligible to apply for an immigrant visa, or for a nonimmigrant visa under § 101(a)(15)(H) of the Immigration and Nationality Act, or for adjustment of status to that of an alien lawfully admitted for permanent residence, until it is established that such person has resided and has been physically

United States Information and Educational Exchange Act is based on the concept that exchange visitors will return to their homeland to foster abroad a better understanding of the American way of life.

§ 2. Categories of exchange visitors.—An exchange visitor may seek to enter the United States in one of the following categories:

(a) a “student,” for the purpose of study, research, or training at, or under the auspices of, an established school or institution of learning, or

(b) a “trainee,” for the purpose of obtaining practical training in a specialized field of knowledge and skill in a non-academic institution or agency, or

(c) a “teacher,” for the purpose of teaching in established primary or secondary schools, or established schools offering specialized instruction, or

(d) a “guest instructor,” for the purpose of imparting knowledge through lectures or special instruction, or

(e) a “professor,” for the purpose of teaching or advanced research, or both, in an established institution of higher learning, or

(f) a “leader in a field of specialized knowledge or skill,” for the purpose of observation, consultation, advanced research or training or the sharing of such specialized knowledge or skill. (22 CFR 63.1(g))

§ 3. Exchange visitor program application.—Any existing reputable United States agency or organization or recognized international agency or organization having United States membership and offices may apply to the Secretary of the State for designation of a program under its sponsorship as an exchange visitor program. This application has to be made on Form DSP-37, “Exchange Visitor Program Application.”

In his application the sponsor of an exchange visitor program assumes the obligation to:

present in a cooperating country or countries for an aggregate of at least two years following departure from the United States: *Provided*, That upon request of an interested Government agency and the recommendation of the Secretary of State, the Attorney General may waive such two-year period of residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: *And provided further*, That the provisions of this paragraph shall apply only to those persons acquiring exchange visitor status subsequent to the date of the enactment hereof.”

(a) notify the district director of the Immigration and Naturalization Service having administrative jurisdiction over the participant's place of temporary residence when

(i) a participant has completed the sponsor's program and is scheduled to depart from the United States or to transfer to another exchange visitor program, or

(ii) a participant has ceased to engage in the activity for which he was admitted and to maintain exchange visitor status;

(b) instruct any participant requiring a temporary extension of stay to apply to the Immigration and Naturalization Service at least thirty days before the expiration of the participant's stay and provide the participant requiring the extension with written evidence showing the period and terms of the extension desired;

(c) provide any participant proposing to transfer to another exchange visitor program with a release in writing which will certify to the need or desirability of further exchange visitor program participation. (22 CFR 63.1(b) and 63.2)

§ 4. Action on application for exchange visitor program designation.—The Secretary of State, upon receipt of Form DSP-37, may require a sponsor to present additional evidence of a documentary nature such as program reports, institutional catalogues, letters of professional recognition, accreditation, or approval. Upon consideration of the application and other evidence submitted, the Secretary of State may, in his discretion, designate the sponsor's program as an exchange visitor program. The sponsor is notified in writing of the decision.

If the sponsor's application is approved the program is assigned a number within one of the following series:

G-I-Programs sponsored by the International Educational Exchange Service,

G-II-Programs sponsored by the International Cooperation Administration,

G-III-Programs sponsored by the United States Information Agency.

G-IV-Programs sponsored by international agencies or organizations.

G-V-Programs sponsored by national, state, or local governmental agencies,

P-I-Programs sponsored by educational institutions such as schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research,

P-II-Programs sponsored by hospitals and related institutions,

P-III-Programs sponsored by non-profit associations, foundations, and institutes,

P-IV-Programs sponsored by business and industrial concerns,

P-V-Programs sponsored by host institutions and organizations to international conferences, congresses, and symposia.

American consular officers abroad and the Immigration and Naturalization Service are notified by the Department of State of each approved program, the sponsor, serial number, and nature and purpose of the program. (22 CFR 63.3)

§ 5. Notification to exchange visitors.—The sponsor of an approved exchange visitor program is required to designate an officer responsible for the administration of the program. After an exchange visitor has been selected by the sponsor he is furnished by the responsible officer with a Form DSP-66, "Certificate of Eligibility for Exchange Visitor Status," for presentation to an American consular officer when applying for a visa. Form DSP-66 must specify the time and terms of the proposed exchange visit which must be within the scope of the designated exchange visitor program. (22 CFR 63.4)

§ 6. Visa application—Classification.—An alien may be classified as an exchange visitor only if he establishes to the satisfaction of the consular officer that:

(a) he has a residence in a foreign country which he has no intention of abandoning and seeks to enter the United States for a temporary period,

(b) he has been accepted to participate, and intends to participate, in an exchange visitor program designated by the Department of State as evidenced by the presentation of a properly executed Form DSP-66 "Certificate of Eligibility for Exchange Visitor Status,"

(c) he has sufficient funds to cover his expenses, or other arrangements have been made to provide for his expenses, and

(d) he has sufficient knowledge of the English language to enable him to undertake the program for which he has been selected, or the organization sponsoring him is aware of his deficiency in this respect and has indicated its willingness to accept him regardless of that deficiency. (22 CFR 41.65(a))

Before an exchange visitor visa may be issued, the consular officer must have received from the Department of State a notification containing the official description of the exchange

visitor program in which the alien has been selected to participate. (22 CFR 41.65(b))

A visa issued to an exchange visitor is identified by the symbol "J." (22 CFR 41.12)

§ 7. Condition of admission of exchange visitor.—An exchange visitor is not eligible for admission to the United States unless he presents Form DSP-66 as described above after he has personally executed the reverse side of the form. The exchange visitor is permitted to retain Form DSP-66 and may use it for any number of reentries within six months from the date of issuance when returning from a temporary absence abroad. (22 CFR 63.4 and 8 CFR 214.1(j))

§ 8. Application for extension of stay.—An exchange visitor who wishes to apply for an extension of stay must submit his application at least thirty days before the expiration of his authorized stay to the district director of the Immigration and Naturalization Service having administrative jurisdiction over the exchange visitor's place of temporary residence. The application must be accompanied by the Form DSP-66 with which the exchange visitor originally obtained status, properly endorsed by the sponsor to show the time and terms of the extended stay for which application is made.

The Immigration and Naturalization Service may refer the application to the Department of State for its views if it falls within one of the categories of cases which the Department of State has advised the Service are questionable from an exchange point of view. (22 CFR 63.5(b))

Since many exchange visitors have attempted to remain in the United States longer than is necessary for the purposes of the program, the Department of State and the Immigration and Naturalization Service have set the following general limits on the stay of exchange visitors:

(a) Graduate nurses will be limited to a stay of two years;

(b) Doctors of Medicine will be limited to a stay of five years for internships and residencies;

(c) Students will be permitted to remain as long as they pursue substantial scholastic programs leading to recognized degrees or certificates, and show clear progress toward earning the degrees or certificates. Students whom the sponsoring schools recommend for practical training should be permitted to remain for such purpose up to eighteen months after receiving their degrees or certificates;

(d) Research scholars will be limited to a stay of three years;

(e) Guest teachers and instructors will be limited to a stay of two years;

(f) Business and industrial trainees will be limited to a stay of eighteen months.

These limits apply to present and future exchange visitors. They apply regardless of the number of programs in which an exchange visitor participates. This means that a transfer from one program to another will not extend the limits of the stay of an exchange visitor beyond the limit set forth for his particular category.²

§ 9. Application for program transfer.—If an exchange visitor wishes to transfer from one exchange visitor program to another, he must apply to the district director of the Immigration and Naturalization Service nearest his place of residence at least thirty days before participation in the new program is scheduled to begin. The application must be accompanied by Form DSP-67, "Certificate of Eligibility for Program Transfer of Exchange Visitor." Before granting permission to transfer from one program to another the Immigration and Naturalization Service may consult with the Department of State to determine whether the transfer is in the best interests of international exchange. (22 CFR 63.5(c))

§ 10. Temporary disqualification of exchange visitor as immigrant or temporary worker.—An exchange visitor who acquired exchange visitor status subsequent to June 4, 1956, including an alien granted an extension of his temporary admission subsequent to September 20, 1956, is ineligible to receive an immigrant visa or a nonimmigrant visa as a temporary worker, unless he has resided for at least two years following his departure from the United States in a country or countries participating in the exchange visitor program, or unless this requirement has been waived by the Attorney General. (Act of June 4, 1956, 70 Stat. 240, 22 CFR 41.91(d) and 42.91(c)) For a discussion of this disqualification and the waiver procedure see Chapter 33, Section 28.³

§ 11. Application for change of status to exchange visitor from another nonimmigrant status.—Special procedures apply to the change of status from one nonimmigrant status to that of an exchange visitor. This procedure is discussed in Chapter 42.

² Notice to responsible officers of exchange visitor programs issued by the Department of State on April 24, 1959.

³ See also "Immigration of Educational Exchange Personnel," Statement by Representative Francis E. Walter, Congressional Record of February 5, 1959, pp. 1691, 1692.

CHAPTER 24

TREATY TRADERS AND INVESTORS

SECTION.

1. Definition.
 - (a) Treaty trader.
 - (b) Treaty investor.
 - (c) Spouse and child of treaty trader and investor.
 - (d) "National."
 - (e) Visa symbol.
2. Treaty traders.
 - (a) Conditions of classification.
 - (b) Treaties of commerce and navigation.
 - (c) Application for extension of temporary stay.
 - (d) Loss of status of treaty trader and dependent.
 - (1) Treaty trader.
 - (2) Dependent.
 - (e) Treaty traders admitted under Immigration Act of 1924.
 - (f) Foreign information media representatives and treaty traders.
3. Treaty investors.
 - (a) Conditions of classification.
 - (b) Treaties of commerce and navigation.
 - (c) Application for extension of temporary stay.
 - (d) Loss of status by treaty investor and dependent.
 - (1) Treaty investor.
 - (2) Dependent.

§ 1. Definition.—Treaty traders and investors are nonimmigrants entitled to enter the United States under the provisions of a treaty of commerce and navigation between the United States and the foreign state of which they are nationals, and their spouses and children.¹

(a) **Treaty trader.** A treaty trader is a nonimmigrant who seeks to enter the United States solely to carry on substantial trade, principally between the United States and the foreign state of which he is a national. (Section 101(a) (15) (E) (i))

(b) **Treaty investor.** A treaty investor is a nonimmigrant who seeks to enter the United States solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital. (Section 101(a) (15) (E) (ii))

(c) **Spouse and child of treaty trader and investor.** The spouse and child of a treaty trader or investor are entitled to the

¹ See ch. 5, § 3(e) for definition of term "spouse" and ch. 12, § 2(b) for definition of term "child."

same classification as the principal applicant if they accompany or follow to join him. The fact that the spouse or child does not have the same nationality as the treaty trader or investor does not affect the entitlement of either to derive status from him. (22 CFR 41.40(c) and 41.41(b))

(d) **“National.”** An alien may be considered a “national” of a foreign state for the purposes of classification as a treaty trader or investor only if he is a citizen or subject of a foreign country with which exists at the time of his visa application a treaty of commerce and navigation with the United States.

(e) **Visa symbol.** A treaty trader, his spouse and child are given the visa symbol “E-1”; a treaty investor, his spouse and child, the visa symbol “E-2.” (22 CFR 41.12)

§ 2. Treaty traders.

(a) **Conditions of classification.** A treaty trader is required to establish:

(1) that he seeks to enter the United States solely to carry on substantial trade, principally between the United States and the foreign state of which he is a national;

(2) that the trade is of a substantial nature which is international in scope;

(3) that the trade is carried on by him in his own behalf or as an agent of a foreign person or organization engaged in trade, and is principally between the United States and the foreign state of which the alien is a national;

(4) if he is employed by a foreign person or organization having the nationality of the treaty country, that he will be engaged in duties of a supervisory or executive character or, if he is or will be employed in a minor capacity, that he has special qualifications that will make his services essential to the efficient operation of the employer's enterprise and will not be employed solely in a manual capacity; and

(5) that he intends to depart from the United States upon the termination of his status. (22 CFR 41.40(a) and (b))

If the applicant for a treaty trader visa is employed or to be employed he and his employer must have the nationality of the treaty country. The requirement that the applicant be employed by a foreign person or organization having his nationality is satisfied when it is shown that 51 per cent or more of the stock of the employer organization is owned by persons of

the applicant's nationality. Such a firm is a "foreign organization" within the meaning of the regulation, without regard to whether it was incorporated abroad or in the United States.²

In determining whether an alien plans to carry on substantial trade principally between the United States and the treaty country the consular officer will give consideration to any conditions in the treaty country which may affect the alien's ability to meet this requirement. (22 CFR 41.40(b))

An applicant for a visa as a treaty trader, in order to establish his classification, is usually required to submit bank statements, invoices, and correspondence from persons or organizations with which he has or will have commercial relations.

(b) **Treaties of commerce and navigation.** As of December 1, 1960, treaties of commerce and navigation with respect to treaty traders were in force between the United States and the following countries:

Argentina	Brunei (Borneo)
Austria	China
Belgium	Colombia
Bolivia	Costa Rica
Denmark	Liberia
Estonia	Netherlands
Ethiopia	Nicaragua
Finland	Norway
France	Pakistan *
Germany	Paraguay
Greece	Spain
Honduras	Switzerland
Iran	Thailand
Ireland	Turkey
Israel	United Kingdom of Great
Italy	Britain and Northern
Japan	Ireland
Korea	Yugoslavia
Latvia	

Under the provisions of the Act of June 18, 1954, nationals of the Philippines, and their spouses and children, if otherwise qualified, may be classified as treaty traders upon a basis of

² Central Office, *In the Matter of N.S.*, 7, I. & N. Dec. 426, March 28, 1957.

* A treaty with Pakistan, signed at Washington on November 12, 1959, was approved by the Senate on August 17, 1960. (Congressional Record of August 17, 1960, p. 15418) It will become effective one month after the exchange of the instruments of ratification which had not taken place when this book went to press.

reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines.³

In determining the scope of each treaty it is essential to ascertain whether it may contain territorial limitations. For example, the convention to regulate commerce between the United States and the United Kingdom of Great Britain and Northern Ireland applies only to British territory in Europe, i.e., the British Isles, the Channel islands, Gibraltar and Malta, and to "inhabitants" of this territory. The term "inhabitant," as used in the convention, means "one who resides actively and permanently in a given place, and has his domicile there."⁴

(c) **Application for extension of temporary stay.** A treaty trader who applies for an extension of his temporary stay has to submit to the Immigration and Naturalization Service, in addition to application Form I-539, "Application to extend time of temporary stay," Form I-126, "Annual report of status by treaty trader," together with the supporting documents required by this form. (Instructions on Form I-539)

³ Public Law 419, 83rd Congress (68 Stat. 264). The circumstances leading to the enactment of this measure are set forth in Senate Report No. 1464, 83rd Congress, Second Session. An Executive agreement with the Philippines implementing this act and concluded on September 6, 1955, will remain in force until July 3, 1974, and thereafter until terminated by one year written notice by either government. (6 UST 3030, TIAS 3349) An explanatory note annexed to the notes exchanged between the United States and the representative of the Philippines reads as follows:

"A foreign organization within the meaning of this section is an organization which possesses the nationality of the alien desiring to qualify as a 'treaty trader.' The fact that an organization is incorporated under the laws of a State of the United States does not necessarily determine that it is not a foreign organization. The nationality of such a corporation may be determined for visa purposes by the nationality of those persons who own the principal amount (i.e., fifty-one per cent or more of the stock of that corporation)." (6 UST 3034)

In addition, the Department of State, on September 7, 1955, addressed an Aide-Memoire to the Embassy of the Philippines which included the following discussion of the meaning of the words "substantial amount of capital" as used in the act:

"As indicated in the conversation under reference, the word 'substantial' as used in these sections of the act shall not be interpreted to discourage particular types of investment or necessarily to exclude small traders or investors. The criteria for determining eligibility for treaty investor and treaty trader status have been influenced by considerations of preventing abuse or evasion of the two countries' immigration laws, including quota restrictions. What constitutes a substantial investment is a relative matter and is not determined alone by the size of the investment. For example, more capital would be required to make a substantial investment in a large automobile manufacturing corporation than would be required to make a substantial investment in a corporation running a factory which manufactures children's shoes exclusively. Notwithstanding, the latter case would not be denied the benefits of treaty investor status if it met the other requirements of the statute.

"The intent of the treaty investor provision is to permit the entry of aliens who have surplus capital to invest in bona fide enterprises as distinguished from the investment of relatively small capital in a small enterprise for the sole purpose of earning a livelihood." (Visa Office Bulletin No. 11, November 20, 1955)

⁴ 8 Stat. 228; TS 110.

(d) Loss of status of treaty trader and dependent.

(1) Treaty trader. A treaty trader loses his status if he changes from the business or activity for which he was admitted to any other business or activity as a trader unless specifically authorized by the Immigration and Naturalization Service. (Form I-358, Special Instructions)

A treaty trader also loses his status upon the termination of the treaty on which his status is based.

(2) Dependent. The dependent of a treaty trader loses his status if the principal alien is no longer eligible to remain in the United States as a treaty trader, or the treaty trader dies, or, in the case of the dependent spouse, if the marriage to the treaty trader terminates, or, in the case of a child, when the child marries or reaches his twenty-first birthday.

(e) Treaty traders admitted under Immigration Act of 1924.

A treaty trader was admitted under the Immigration Act of 1924 for an unlimited period of time if he agreed to submit annually to the Immigration and Naturalization Service a maintenance-of-status report indicating whether he continues to be eligible for readmission to the country from which he came or to some other country and that he had fulfilled and continued to fulfill all the conditions of his admission. A treaty trader admitted under the 1924 Act may continue to submit these annual maintenance-of-status reports in lieu of applying for an extension of stay. This report is to be submitted on Form I-126 annually on the anniversary date of the original admission to the United States of the treaty trader. (8 CFR 214.2 (e))

(f) Foreign information media representatives and treaty traders. If an alien applying for a nonimmigrant visa appears equally qualified for classification as a treaty trader and as a representative of a foreign information medium as described in Chapter 25, he will first be considered for classification under the latter category before consideration is given to his classification as a treaty trader. (22 CFR 41.40 (d))

§ 3. Treaty investors.

(a) Conditions of classification. A treaty investor is required to establish that:

(1) he seeks to enter the United States solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; and

(2) he is an alien who (i) has invested or is investing capital in a bona fide enterprise and is not seeking to proceed to the United States in connection with the investment of a small amount of capital in a marginal enterprise solely for the purpose of earning a living; or (ii) is employed by a treaty investor in a responsible capacity and that the employer is a foreign person or organization of the same nationality as the applicant; and

(3) that he intends to depart from the United States upon the termination of his status. (Section 101(a)(15)(E)(ii) and 22 CFR 41.41)

While previous law contained provisions for the classification of treaty traders, the Immigration and Nationality Act added the class of treaty investor to provide for the temporary admission of aliens who "seek to enter the United States to develop or direct the operations of commercial enterprises" and "who will be engaged in developing or directing the operations of a real operating enterprise and not a fictitious paper operation."⁵

If the applicant for a treaty investor visa is employed or to be employed he and his employer must have the nationality of the treaty country. The requirement that the applicant be employed by a foreign person or organization having his nationality is satisfied when it is shown that 51 per cent or more of the stock of the employer organization is owned by persons of the applicant's nationality. Such a firm is a "foreign organization" within the meaning of the regulation, without regard to whether it was incorporated abroad or in the United States. This interpretation is based on the long-standing precedent established in the interpretation of identical language applicable to treaty traders. (See above Section 2(a))

(b) Treaties of commerce and navigation. As of December 1, 1960, treaties of commerce and navigation with respect to treaty investors were in force with France, Germany, Iran, Japan, Korea, The Netherlands, Nicaragua and Pakistan*.

Under the provisions of the Act of June 18, 1954, nationals of the Philippines, and their spouses and children, if otherwise qualified, may be classified as treaty investors upon a basis of

⁵ See House Report No. 1365, 82nd Congress, Second Session, p. 44.

* A treaty with Pakistan, signed at Washington on November 12, 1959, was approved by the Senate on August 17, 1960. (Congressional Record of August 17, 1960, p. 15418) It will become effective one month after the exchange of the instruments of ratification which had not taken place at the time this book went to press.

reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines.⁶

(c) **Application for extension of temporary stay.** A treaty investor who applies for an extension of his temporary stay has to submit to the Immigration and Naturalization Service, in addition to application Form I-539, "Application to Extend Time of Temporary Stay," Form I-126, "Annual Report of Status by Treaty Investor," together with the supporting documents required by this Form. (Instructions on Form I-539)

(d) **Loss of status by treaty investor and dependent.**

(1) **Treaty investor.** A treaty investor loses his status if he changes from the business or activity for which he was admitted to any other business or activity as an investor unless specifically authorized by the Immigration and Naturalization Service. (Form I-358, Special Instructions)

A treaty investor also loses his status upon the termination of the treaty on which his status is based.

(2) **Dependent.** The dependent of a treaty investor loses his status if the principal alien is no longer eligible to remain in the United States as a treaty investor; or the treaty investor dies; or, in the case of the dependent spouse, if the marriage to the treaty investor terminates; or, in the case of a child, when the child marries or reaches his twenty-first birthday.

⁶ See footnote 3, *supra*.

CHAPTER 25

REPRESENTATIVES OF FOREIGN PRESS, RADIO, FILM, OR OTHER FOREIGN INFORMATION MEDIA

SECTION.

1. Definition.
 - (a) Principal applicant.
 - (b) Spouse and child.
 - (c) Visa symbol.
2. Conditions of classification.
 - (a) Requirement of reciprocity.
 - (b) Foreign information media representatives and treaty traders.
 - (c) Residence abroad no condition of classification.
3. Special requirements and conditions.
 - (a) Conditions of admission.
 - (b) Application for extension of time of temporary stay.

§ 1. Definition.

(a) **Principal applicant.** Nonimmigrant classification is accorded an alien who is a bona fide representative of foreign press, radio, film, or other information medium who seeks to enter the United States solely to engage in such vocation. (Section 101(a)(15)(I))

(b) **Spouse and child.** The spouse and child of an alien described under (a) are accorded the same nonimmigrant classification if they are accompanying or following to join him.¹ (Section 101(a)(15)(I))

(c) **Visa symbol.** An alien described under (a) and (b) is given the visa symbol "I." (22 CFR 41.12)

§ 2. Conditions of classification.

(a) **Requirement of reciprocity.** An alien may be accorded "I" classification only if he is a bona fide representative of a foreign press, radio, film, or other information medium having its home office in a foreign country, the government of which grants, upon a basis of reciprocity, similar privileges to representatives of such a medium having home offices in the United States. (Section 101(a)(15)(I) and 22 CFR 41.60(a))

(b) **Foreign information media representatives and treaty traders.** If an alien applying for a nonimmigrant visa appears equally qualified for classification as a treaty trader as de-

¹ See ch. 5, § 3(e) for definition of term "spouse" and ch. 12, § 2(b) for definition of term "child."

scribed in Chapter 24 and as a representative of a foreign information medium, he will first be considered for classification under the latter category before consideration is given to his classification as a treaty trader. (22 CFR 41.40(d) and 41.60(b))

(c) **Residence abroad no condition of classification.** The law does not require that an information medium representative have a residence in a foreign country which he has no intention of abandoning. The absence of this requirement does not detract from the fact that the alien must be a bona fide nonimmigrant and does not seek an "I" classification for the purpose of circumventing the quota and other provisions applicable to immigrants.

§ 3. Special requirements and conditions.

(a) **Conditions of admission.** The admission of an alien as a foreign information medium representative constitutes an agreement by the alien not to change the information medium or his employer until he obtains permission to do so from the district director of the Immigration and Naturalization Service having jurisdiction over his residence. (8 CFR 214.2(i))

(b) **Application for extension of time of temporary stay.** In submitting an application to extend the time of his temporary stay, the representative of a foreign information medium must submit together with Form I-539 a statement from his employer establishing that the applicant is a representative of a foreign information medium in the United States and setting forth his current and intended activities and the reasons for the requested extension. (Form I-539, Instructions)

CHAPTER 26

TEMPORARY WORKERS AND INDUSTRIAL TRAINEES

SECTION.

1. Definition.
2. Petition requirement.
3. Procedure in submitting petition Form I-129B.
 - (a) Documentation required.
 - (1) "H-1" aliens.
 - (2) "H-2" aliens.
 - (3) "H-3" aliens.
 - (b) Submission of petition.
 - (c) Decision and notification.
 - (d) Revocation of approved petition.
 - (1) Automatic revocation.
 - (2) Revocation on notice.
4. Conditions of classification.
 - (a) Petition requirement and significance.
 - (b) Suspension of action.
 - (c) Visa issuance.
5. Temporary worker, visitor for business, industrial trainee, student and immigrant.
6. Official trainees.
7. Special requirements and conditions.
 - (a) Time for which temporary worker and industrial trainee may be admitted.
 - (b) Extension of temporary stay.
8. Temporary disqualification of exchange visitor as temporary worker.
9. Spouses and children of temporary workers and industrial trainees.

§ 1. Definition.—Nonimmigrant classification as a temporary worker or industrial trainee is accorded an alien having a residence in a foreign country which he has no intention of abandoning and:

(a) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability (visa symbol "H-1"), or

(b) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country (visa symbol "H-2"), or

(c) who is coming temporarily to the United States as an industrial trainee (visa symbol "H-3"). (Section 101(a) (15) (H) and 22 CFR 41.12) An industrial trainee is a non-immigrant alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer

for the purpose of receiving instruction in any field of endeavor, including agriculture, commerce, communication, finance, government, transportation, and the professions, as well as in a purely industrial establishment. (22 CFR 41.55(c))

§ 2. Petition requirement.—The question of importing any alien as a temporary worker or trainee in any specific case is determined by the Attorney General, after consultation with appropriate agencies of the government, upon petition of the importing employer or trainer. Such petition must be made and approved before the visa is granted. The approval of the petition does not, of itself, establish that the alien is a non-immigrant. (Section 214(c))

The petition required in the case of a temporary worker and trainee is to be filed under oath in duplicate on Form I-129B, "Petition for Permission to Import Nonimmigrant Aliens." The fee for the filing of the application is \$10. It is not returnable regardless of whether the petition is approved or denied. (Section 281(6) and Form I-129B, Instructions)

§ 3. Procedure in submitting petition Form I-129B.

(a) Documentation required.

(1) **"H-1" aliens.** In the case of an alien who is applying for classification as an "H-1" alien of distinguished merit and ability, the petition must be accompanied by a full description of the high education, technical training, specialized experience or exceptional ability of the alien for whom application to import is made and the manner in which these qualifications were acquired. Allegations of high education or technical training must be supported by original, certified, or photostatic copies of diplomas, school certificates, or equivalent documents or affidavits. They must be executed by the person in charge of the records of the educational or other institution, firm, or establishment at which the education or training was acquired, improved, or perfected. Allegations of specialized experience or exceptional ability must be supported by affidavits describing the degree and extent of the alien's experience or ability. They must be executed by the appropriate officer of the firm, organization, establishment or other institution at which the alien acquired or perfected his experience or ability. (Form I-129B, Instructions)

(2) **"H-2" aliens.** In the case of an alien who is applying for classification as an "H-2" alien who is to perform temporary services or labor, the following documents must accompany the petition:

(i) one copy of a clearance order from the United States Employment Service concerning the availability of like labor in the United States, and stating that Employment Service policies have been observed (the application for clearance order should be made to local United States Employment Service offices) ;

(ii) a statement containing a full description of the situation or conditions which make the importation of the alien or aliens necessary and whether the necessity to import is temporary, seasonal or permanent, and if temporary or seasonal whether it is expected to be recurrent;

(iii) a statement of efforts made by the petitioner to secure persons in the United States to perform the work, labor or services to be performed by the alien, including clippings of advertisements placed in newspapers, trade journals, professional and similar publications in the field of such work, labor or services, and copies of correspondence, reports, replies received as a result of these advertisements. If no reply or report was received the petitioner should so indicate. (Form I-129B, Instructions)

(3) **"H-3" aliens.** In the case of an alien who is applying for classification as an "H-3" alien who desires to enter the United States as an industrial trainee, a statement describing the kind of training to be given him, the position or duties for which the training will prepare him and the reason why the training cannot be obtained outside the United States must accompany the petition. (Form I-129B, Instructions)

(b) **Submission of petition.** Petition Form I-129B must be executed in duplicate and be submitted with supplemental documents in duplicate to the district director of the Immigration and Naturalization Service having jurisdiction over the place where the alien for whom the petition is filed will perform services or labor or will be trained. More than one alien may be included in a petition Form I-129B if they proceed from the same place of origin and are destined to the United States for the purpose of performing the same type of services. A single application fee of \$10 is required for each petition regardless of the number of nonimmigrants included. (Section 281(6) and Form I-129B, Instructions)

(c) **Decision and notification.** The petitioner will be notified by the district director of the decision reached. If the petition is denied, the reasons for the denial will be stated and the petitioner will be informed of his right to appeal. (8 CFR 214.4) If the petition is approved, the district director will send it

properly endorsed to the American consular officer before whom the alien applies for a visa.

(d) Revocation of approved petition.

(1) Automatic revocation. A petition approved for a temporary worker or trainee is revoked automatically as of the date of approval if:

(i) the beneficiary is not issued a visa on or prior to the expiration date of approval shown on the approved petition; or

(ii) the petitioner dies, goes out of business, or files a written withdrawal of the petition before the beneficiary arrives in the United States. (8 CFR 206.1(a)) When it appears that the approval of the petition has been automatically revoked, the district director who approved the petition will send an appropriate notice of revocation to the consular office at which the alien applies for a visa and a copy of the notice to the petitioner. (8 CFR 206.1(d))

(2) Revocation on notice. The approval of a petition may be revoked by any immigration officer authorized to approve it on any ground other than those leading to its automatic revocation if the propriety of such revocation is brought to his attention. Such action may be taken particularly upon the request for revocation or reconsideration by consular officers. (8 CFR 206.2)

A petition is revoked under these circumstances only after the petitioner has been given notice and an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.

If, upon reconsideration, the approval previously granted is revoked, the petitioner is informed of the decision and the reasons for the decision. He may appeal the revocation within fifteen days after the mailing of the notification. The consular office at which the beneficiary of the petition applies for a visa will be informed of the revocation. (8 CFR 206.3)

§ 4. Conditions of classification.

(a) Petition requirement and significance. An alien may be classified as a temporary worker or industrial trainee only if the consular officer has received from the Immigration and Naturalization Service an approved petition Form I-129B. Upon receipt of the approved petition the consular officer will grant the nonimmigrant status indicated in the petition if the alien establishes that he is a bona fide nonimmigrant and that he is

otherwise eligible to receive a nonimmigrant visa. (22 CFR 41.55(a))

(b) **Suspension of action.** If a consular officer knows or has reason to believe that a temporary worker or industrial trainee is not qualified to perform the services, or to undertake the training specified in the approved petition, he suspends action on the alien's application and submits a report to the Department of State. The case will then be brought to the attention of the Immigration and Naturalization Service for a reconsideration of the approved petition as described above in Section 3(d)(2). (22 CFR 41.55(b))

(c) **Visa issuance.** If a visa is issued to a temporary worker or industrial trainee the petition number will be noted in the visa stamp as well as the period for which the alien's admission has been authorized by the Immigration and Naturalization Service. (22 CFR 41.124(d))

§ 5. Temporary worker, visitor for business, industrial trainee, student and immigrant.—An alien who is of distinguished merit and ability and who seeks to enter the United States temporarily with the general intention of performing temporary services of an exceptional nature requiring such merit and ability, but having no contract or prearranged employment, may be classified as a "B-1" temporary visitor for business. If such an alien, after his admission into the United States, is engaged to perform temporary services, he is required to apply to the Immigration and Naturalization Service for a change of status from a visitor for business to that of a temporary worker as described in Chapter 42.

An alien coming to the United States as temporary worker or trainee under the exchange visitor program provided for in the United States Information and Educational Exchange Act of 1948, as amended, is classified as a nonimmigrant under the symbol "J" and is not subject to the petition procedure required for temporary workers.¹ (22 CFR 41.100(e))

If the position to be filled by the alien in the United States is permanent in nature, he does not qualify for "H" classification notwithstanding that his services are limited to one year. Such an alien must be classified as an immigrant or as an exchange visitor.²

¹ See ch. 23.

² Regional Commissioner, *In the Matter of M.S.M.*, Interim Decision 1049, October 19, 1959; approved by Assistant Commissioner; see also ch. 21, § 3(b).

§ 6. Official trainees.—The mere fact that an alien has been selected by his government for training in the United States with an agricultural, commercial, financial, governmental, or other industrial establishment does not in itself bring this alien within the classification of an “A-2” foreign government official, regardless of whether the alien’s expenses for such training are borne by his government. Such alien is classifiable as an “H-3” industrial trainee or as an exchange visitor. An alien coming to the United States for training may be classified as an “A-2” foreign government official only if he is accredited and accepted as a foreign government official.³

§ 7. Special requirements and conditions.

(a) **Time for which temporary worker and industrial trainee may be admitted.** A temporary worker and an industrial trainee, as a rule, are admitted to the United States for the period authorized by the Immigration and Naturalization Service at the time petition Form I-129B is approved.

(b) **Extension of temporary stay.** A temporary worker or industrial trainee who wishes to apply for an extension of his temporary stay is required to submit with application Form I-539 a statement from the employer or trainer to the effect that the services of the applicant are required under the same conditions as at the time of the original petition. If a United States Employment Service clearance order was required in connection with the approval of the original petition, a new clearance order has to be submitted if the requested extension of stay would permit the applicant to remain in the United States more than six months beyond the date of issue of the original clearance order. (Form I-539, Instructions)

§ 8. Temporary disqualification of exchange visitor as temporary worker.—An exchange visitor who acquired exchange visitor status subsequent to June 4, 1956, including an alien granted an extension of the period of his temporary admission subsequent to September 20, 1956, is ineligible to receive a nonimmigrant visa as a temporary worker unless he has resided for at least two years following his departure from the United States in a country or countries participating in the exchange visitor program, or unless this requirement has been waived by the Attorney General. (Act of June 4, 1956, 70 Stat. 240)

The procedures described in Section 28 of Chapter 33 for the application for a waiver of the two-year foreign residence re-

³ See ch. 18.

quirement in the case of immigrants applies equally in the case of an applicant for an "H" visa.

§ 9. Spouses and children of temporary workers and industrial trainees.—The spouse or child of a temporary worker or an industrial trainee does not derive nonimmigrant classification from him. They have to establish their qualification for nonimmigrant status in their own right.⁴

⁴ For a fuller discussion see ch. 17, § 3.

CHAPTER 27

TRANSIT ALIENS

SECTION.

1. Definition.
2. Aliens in transit.
3. Aliens in bonded transit.
4. Aliens in transit to United Nations.
5. Accredited officials in transit through the United States.

§ 1. Definition.—Nonimmigrant classification is accorded to transit aliens. A transit alien is defined by law as

“an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of Section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758).” (Section 101(a) (15) (C))

Regulations subdivide the class of transit aliens as follows:

- (a) Aliens in transit, who are given the visa symbol “C-1”;
- (b) Aliens in transit to United Nations Headquarters District, who are given the visa symbol “C-2”; and
- (c) Foreign government officials, members of their immediate family, attendants, servants or personal employees in transit, who are given the visa symbol “C-3.” (22 CFR 41.12)

§ 2. Aliens in transit.—An alien applying for classification as a transit alien has to establish that:

- (a) he is passing in immediate and continuous transit through the United States,
- (b) he is in possession of a ticket or other assurance of transportation to his destination,
- (c) he is in possession of sufficient funds to enable him to carry out the purpose of his transit journey, or has sufficient funds otherwise available for that purpose, and
- (d) he has permission to enter some country other than the United States following his transit journey through the United States unless he submits evidence that such advance permission is not required. (22 CFR 41.30)

The requirement that the alien must be in “immediate” as well as continuous transit through the United States was added by the Immigration and Nationality Act to the predecessor

provision of Section 101(a)(15)(C). The term "immediate" contemplates a reasonably expeditious departure of the alien in the normal course of travel as the elements permit and assumes a prearranged itinerary without any unreasonable lay-over privileges.¹

An alien who desires to travel more extensively, or to remain for a longer period than is permitted an alien entering the United States for immediate and continuous transit, is required to apply for a visa under a different classification, usually that of a temporary visitor.²

§ 3. Aliens in bonded transit.—As stated in Section 9 of Chapter 29, a visa and a passport are not required of an alien in direct transit, with the exception of citizens and residents of Communist and Communist-controlled countries described there, if traveling on transportation lines with which the Attorney General has entered into certain contractual agreements.

In order to be entitled to the passport and visa waiver a transit alien must establish at a port of entry that:

- (a) he is admissible;
- (b) he has confirmed onward reservations to at least the next country beyond the United States; and
- (c) he has a document establishing his ability to enter some country other than the United States.

Application for bonded transit without visa and passport must be made at specified ports of entry designated by the Immigration and Naturalization Service, unless the alien seeks to transit from one part of a foreign contiguous territory to another part of the same territory.

The acceptance of the transit privilege constitutes an agreement by the carrier and the alien that he will depart voluntarily from the United States without recourse to any hearing or proceeding and that at all times he is not aboard an aircraft which is in flight through the United States he will be in the custody directed by the district director having jurisdiction over the port of entry. If the alien's admissibility is established only after the Attorney General has waived the alien's inadmissibility under the authority of Section 212(d)(3)(b) as discussed in Chapter 34, Section 4(b)(2), the alien must be in the custody

¹ See House Report No. 1365 of February 14, 1952, 82nd Congress, Second Session p. 43.

² Department of State Bulletin, February 2, 1953, p. 197.

of the Service at the carrier's expense and must depart on the earliest and most direct foreign-destined plane or vessel. (8 CFR 214.2(c)(1))

An alien seeking to join a vessel or aircraft in the United States as a crewman may be granted the transit privilege without visa and passport if he shows that the vessel or aircraft will depart directly foreign and that his departure will be completed within a maximum of five calendar days after his arrival.

If the crewman is joining a vessel he must be in possession of, or must make application upon arrival for, a permanent landing permit and identification card (Form I-184) as discussed in Chapter 28, Section 5, and he must be in possession of a document establishing his ability to enter some country other than the United States. (8 CFR 214.2(c)(1))

As a rule, aliens arriving in the United States on bonded transit without documents are required to present to the Immigration and Naturalization Service Form I-94, "Arrival-Departure Card," in duplicate, which must include the symbol "TRWOV" (Transit Without Visa). The requirement of the "Arrival-Departure Card" does not apply to through-flight air passengers arriving at a United States port from which they will depart directly to a foreign place on the same flight if these passengers remain during ground time in a separate area under the direction and control of the Service. The number of such through-flight passengers must be noted on Customs General Declaration Form 7507. (8 CFR 231.1)³

§ 4. Aliens in transit to United Nations.—An alien within the provisions of paragraph (3), (4), or (5) of Section 11 of the Headquarters Agreement with the United Nations,⁴ to whom

³ For a fuller discussion of the bonded transit program see Frank E. Bartos, "Aliens in Direct Transit," *I. & N. Reporter*, April 1959, p. 47; for a critical analysis see Report of the Commission on Government Security, pursuant to Public Law 304, 84th Congress, as amended, pp. 592–602, Washington, 1957.

⁴ Sec. 11 of Headquarters Agreement with the United Nations (Act of Aug. 4, 1947) reads in part:

"The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Art. 57, par. 2, of the Charter, or the families of such representatives or officials, (2) experts performing missions for the United Nations or for such specialized agencies, (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States, (4) representatives of nongovernmental organizations recognized by the United Nations for the purpose of consultation under Art. 71 of the Charter, or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. . . ." (61 Stat. 758)

a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may, at his own request or at the direction of the Secretary of State, be issued a transit visa bearing the symbol "C-2." (22 CFR 41.31)

An alien to whom such a visa is issued, if otherwise admissible, will be admitted on the additional conditions that he proceeds directly to New York City and remains there continuously, departing therefrom only if required in connection with his departure from the United States, and that he has a document establishing his ability to enter some country other than the United States following his sojourn in the United Nations Headquarters District. (8 CFR 214.2(c)(2))

"C-2" aliens in transit are exempted from certain grounds of ineligibility to receive a visa.⁵

§ 5. Accredited officials in transit through the United States.—An accredited official of a foreign government who intends to proceed in immediate and continuous transit through the United States on official business for his government is entitled

Art. 57 of the Charter of the United Nations (59 Stat. Part 2, 1031, 1046, Act of June 26, 1945), provides:

"1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Art. 63."

"2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies."

Art. 71 of the Charter of the United Nations (59 Stat. Part 2, 1031, 1047) provides:

"The Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."

The Act of August 4, 1947 (61 Stat. 756), authorizing the President to bring into effect the Headquarters Agreement with the United Nations, stipulated in Section 6 of Annex 2 the following reservations concerning the security of the United States:

"Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13(3)(e) of the agreement, and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect to facilitating entrance into the United States by persons who wish to visit the headquarters district and do not enjoy the right of entry provided in section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws."

⁵ See ch. 35.

to a "C-3" visa on a basis of reciprocity. Such an alien is exempted from certain grounds of ineligibility to receive a visa as described in Chapter 35. Members of the immediate family, attendants, servants, and personal employees of such an official are entitled to the same classification and exemptions. (22 CFR 41.32)⁶

⁶ For a discussion of the terms "accredited," "immediate family," "attendants," "servants" and "personal employees" see ch. 18, § 1(a)(1), (b) and (c), respectively.

CHAPTER 28

CREWMEN

SECTION.

1. Definition.
2. Foreign government official crewmen.
3. Crew-list visas.
 - (a) Definition.
 - (b) Application.
 - (c) Issuance.
 - (d) Validity.
 - (e) Supplemental crew-list visa.
 - (f) Fee.
 - (g) Exclusion from crew-list visa.
 - (h) Refusal of crew-list visa.
4. Conditional permit to land.
5. Permanent landing permit.
6. Arrest and deportation of crewmen.

§ 1. Definition.—Nonimmigrant classification is accorded

“an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft.” (Section 101(a)(15)(D))

The term “crewman” means a person serving in any capacity on board a vessel or aircraft. (Section 101(a)(10)) A visa issued to an alien crewman is given the visa symbol “D.” (22 CFR 41.12)

An alien member of a crew of a fishing vessel having its home port or operating base in the United States is statutorily excluded from the definition of nonimmigrant crewman. Such alien is classified as an immigrant.¹

An alien applying for a visa as a crewman must establish that he has permission to enter some foreign country after a temporary landing in the United States. (22 CFR 41.35(a))

An alien employed on board a vessel or aircraft in a capacity not required for normal operation and service on the particular vessel or aircraft, or an alien employed or listed as a regular

¹ See House Report No. 1365 of February 14, 1952, 82nd Congress, Second Session, p. 43.

member of the crew in excess of the number normally required is not classifiable as a crewman. (22 CFR 41.35(b))

In determining whether the services of an alien are required for the normal operation and service on board a vessel, the services required on each ship are taken into consideration. For example, a beautician or a saleswoman employed on board a luxury liner is held to be classifiable as a crewman, as is an electrician employed on board a cable ship or a chemist employed on board a whale boat. It is immaterial for the classification of such alien whether he is employed by the carrier itself or by a concessionaire.

An alien who is applying for a visa or seeking to enter the United States in order to join, on arrival, a vessel or aircraft, to serve thereon in any capacity, is classifiable as an alien in transit ("C-1") if the vessel or aircraft he is planning to join is destined to ship foreign directly from the port at which the alien joins it; otherwise, he is classifiable as a visitor for business ("B-1"). The conditions and qualifications applicable to crewmen who seek to enter the United States as aliens in bonded transit, in order to join a vessel, are discussed in Chapter 27, Section 3.

§ 2. Foreign government official crewmen.— Alien crewmen serving on board a foreign warship or other vessel of war, or military, naval, or other aircraft of the armed forces of a foreign country when making a friendly call at a United States port under advance arrangements made with the military authorities of the United States, or serving on any other government vessel or aircraft are not subject to the documentary requirements of passports and visas if these requirements have been waived by the Secretary of State and the Attorney General under the authority described in Chapter 29, Section 4. (22 CFR 41.36)

§ 3. Crew-list visas.

(a) **Definition.** A crew-list visa is a nonimmigrant visa issued on a manifest of crewmembers of a vessel or aircraft which includes all aliens listed in the manifest unless otherwise stated. (22 CFR 41.127(a)) The documentation of alien crewmen through the issuance of crew-list visas is authorized by statute until such time as it becomes practicable to issue individual crewman visas to all alien crewmen who intend to land temporarily in the United States. (Section 221(f))

(b) **Application.** In applying for a crew-list visa a list of all alien crewmen who are not in possession of valid individual entry documents must be submitted to a consular officer on

Form I-418, "Crew List," or such other forms as may be prescribed. In lieu of a manifest on Form I-418, the manifest of alien crewmen serving on board an aircraft may be submitted on International Civil Aviation Organization (ICAO) manifest, or on customs Form 7507, "General Declaration," whenever the number of crewmen does not exceed the number which can be listed on the form. In cases of alien seamen serving on vessels, the duplicate copy of Form I-418 must contain the date, city, and country of birth of each alien seaman who does not have in his possession a valid individual visa or an Immigration and Naturalization Service Form I-151, and furthermore the place of issuance and the authority issuing the passport held by the alien seaman. The submission of the crew list with such other information as may be required by the consular officer is considered the formal application for a crew-list visa. No other application form is required. (22 CFR 41.127(b)(1) and (2))

If a vessel or aircraft destined to the United States cannot call at a port or place at which a consular officer is stationed, the crew list is submitted for visaing by mail or by other means to a consular officer stationed at a port or place nearest the vessel's port of call. (22 CFR 41.127(b)(4))

(c) **Issuance.** In issuing a crew-list visa the nonimmigrant visa stamp described in Chapter 31, Section 6 is placed on the last page of the manifest. The symbol "D" is inserted in the space provided in the visa stamp.

The original of the visaed crew list is delivered by the consular officer to the master of the vessel or commanding officer of the aircraft or to their authorized agent. The duplicate copy is retained at the consular office. (22 CFR 41.127(e))

(d) **Validity.** A crew-list visa is valid for a period of six months from the date of issuance and for a single application for admission into the United States.

(e) **Supplemental crew-list visa.** If an additional crewman not in possession of a valid individual entry document is signed on after the issuance of the crew-list visa, a supplemental crew-list visa must be obtained at the consular office at which the crew-list visa was issued or at the consular office nearest the vessel's subsequent place of call. (22 CFR 41.127(f))

(f) **Fee.** The fee for the issuance of a crew-list visa is \$2. No fee is charged for the issuance of a supplemental crew-list visa or for a crew-list visa issued in the case of an American vessel. (22 CFR 41.127(c))

(g) **Exclusion from crew-list visa.** If a consular officer knows or has reason to believe that a crew list submitted for a visa contains the name of an alien who is not a bona fide non-immigrant or who is otherwise ineligible to receive an individual visa as a crewman, he must exclude from the crew-list visa the name of any such crewmember. This is achieved by placing a notation below the visa stamp indicating the name of each crewman so excluded. A consular officer may not strike a crewman's name from a crew list. (22 CFR 41.132(a))

An alien crewman whose name has been excluded from the crew-list visa is not precluded from proceeding to the United States as a member of the crew but, upon his arrival at a port of entry, he will not be permitted to land, being an alien without proper documentation.

(h) **Refusal of crew-list visa.** A crew-list visa is refused if all aliens listed on the crew list are found by the consular officer not to be bona fide crewmen or otherwise ineligible to receive individual visas as crewmen. In such case the original of the crew-list visa is returned to the master, commanding officer, or authorized agent. The duplicate is retained in the consular office. (22 CFR 41.132(b))

§ 4. Conditional permit to land.—An immigration officer may grant an alien crewman a conditional permit to land in the United States if it is determined that the crewman is eligible for such permit under the provisions of law and if he agrees to leave the United States within the period for which he was permitted to land either on the vessel or aircraft on which he arrived or on a vessel or aircraft other than the one on which he arrived. (Section 252(a) and 8 CFR 252.1(d))

The period of time for which an immigration officer may permit the temporary landing of a crewman may not exceed twenty-nine days. (Section 252(a) and 8 CFR 252.1(d))

A crewman permitted to land is issued a landing permit on Form I-95. (8 CFR 252.1(e))

§ 5. Permanent landing permit.—An alien crewman who seeks a permanent type of landing permit and identification card may make application on Form I-174 to an immigration officer. Upon establishing his status, he will be issued a laminated Form I-184, "Alien Crewman Landing Permit and Identification Card," which will be valid for an unlimited number of conditional landings without endorsement on each arrival. The Form I-184 is valid until revoked. No appeal lies from a denial of an application for, or the revocation of, a landing permit on Form I-184. (8 CFR 252.4)

The holder of an Alien Crewman Landing Permit and Identification Card is not relieved from the statutory requirement of a visa, passport, or other travel document. If such an alien arrives at a port of entry without a visa or passport he may not be permitted to land unless the documentary requirement has been waived by joint action of the Secretary of State and the Attorney General, as described in Chapter 29, Sections 4(a) and 11.²

§ 6. Arrest and deportation of crewman.—An alien permitted to land conditionally as a crewman will, within the period for which he was permitted to land, be taken into custody by an immigration officer without a warrant of arrest, if:

- (1) it is determined that he is not a bona fide crewman, or
- (2) he does not intend to depart on the vessel or aircraft which brought him to the United States.

After the deportability of the alien crewman has been established, his conditional permit to land will be revoked and he will be returned immediately for deportation to the vessel or aircraft on which he came to the United States. If this is not practicable the crewman will be deported in any other manner at the expense of the transportation line which brought him to the United States. (Section 252(b), 8 CFR 252.2)

An alien crewman who was given a conditional permit to land and who is held deportable after the period for which he was permitted to land has expired, is considered as having failed to maintain his nonimmigrant status and deportation proceedings will be instituted against him as in the case of any other deportable alien.³

²The program for the issuance of a permanent landing permit and identification card is described in "Landing Permits for Crewmen" by John F. O'Shey, *I. & N. Reporter*, January 1959, p. 36.

³See ch. 46; see also BIA, *In the Matter of M.*, 5, I. & N. Dec. 127, February 16, 1953.

CHAPTER 29

PASSPORT AND VISA REQUIREMENT FOR NONIMMIGRANTS—EXCEPTIONS

SECTION.

1. Summary.
2. Nonresident alien border crossing identification card.
 - (a) Application and issuance.
 - (b) Validity and revocation.
3. Exemptions from passport and visa requirements by statute or treaty.
4. Administrative waiver of passport and visa requirements.
5. Canadian nationals and British subjects.
 - (a) Canadian nationals.
 - (1) Visa waiver.
 - (2) Passport waiver.
 - (b) British subjects in Canada and Bermuda.
 - (1) Visa waiver.
 - (2) Passport waiver.
 - (c) British subjects in Bahamas—Visa waiver.
 - (d) British subjects in Cayman Islands—Visa waiver.
6. British, French and Netherlands nationals in Caribbean area—Visa waiver.
7. Mexican nationals.
 - (a) Visa and passport waiver.
 - (b) Visa waiver.
8. Cuban nationals.
 - (a) Visa and passport waiver.
 - (b) Visa waiver.
9. Aliens in bonded transit, "transits without visas"—Visa and passport waiver.
10. Foreign government officials in transit.
11. Unforeseen emergency.
12. Administrative waiver of passport and visa requirements by joint action of consular and immigration officers.
 - (a) Visa and passport waiver; residents of contiguous territory.
 - (b) Passport waiver; aliens for whom passport extension facilities are unavailable.
 - (c) Passport waiver; aliens precluded from obtaining passport extensions by foreign government restrictions.
 - (d) Visa waiver; certain aliens proceeding to the United States under emergent circumstances.
 - (e) Visa and passport waiver; members of armed forces of foreign countries making friendly visits to the United States.
 - (f) Passport waiver; landed immigrants in Canada.
 - (g) Visa and passport waiver; authorization to individual consular offices.

§ 1. Summary.—A nonimmigrant, as a rule, is required to possess:

- (1) a passport valid for a minimum period of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay in the United

States, authorizing him to return to the country from which he came or to proceed to, and enter, some other country during such period; and

(2) at the time of application for admission to the United States, a valid nonimmigrant visa or border crossing identification card. (Section 212(a)(26))

The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality, if any, which is valid for the entry of the bearer into a foreign country. (Section 101(a)(30)) Such passport is not considered limited to a national passport, but includes any other document issued by competent authority. It is not limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport. Written permission to enter a foreign country is considered as fulfilling one of those requirements if it is clearly valid for such purpose. (22 CFR 41.1)¹

§ 2. Nonresident alien border crossing identification card.—A nonresident border crossing identification card is a document of identity issued by a consular officer or an immigration officer to an alien who is a resident in foreign contiguous territory for the purpose of crossing over the border between the United States and foreign contiguous territory. (Section 101(a)(6))

(a) **Application and issuance.** A citizen of Mexico must apply to the Immigration and Naturalization Service for a nonresident alien border crossing card on Form I-190 and submit evidence of his Mexican citizenship and residence; a citizen of Canada or a British subject residing in Canada must apply on Form I-175 and submit evidence of his Canadian or British citizenship and residence in Canada. If the application is approved, the Mexican nonresident alien border crossing card is issued on Form I-186 and the Canadian border crossing card on Form I-185. The card issued to a Mexican citizen may be presented at a Mexican border port in lieu of a visa. In the case of Canadian citizens or British subjects residing in Canada who are exempt from the visa requirement, the card serves the purpose of facilitating their entry into the United States. (8 CFR 212.6(a) and (b)) No appeal lies from a denial of the application. This action, however, is without prejudice to a subsequent application for a visa or admission to the United States. (8 CFR 212.6(c))

(b) **Validity and revocation.** Forms I-185 and I-186 are valid until revoked. They may be declared void by the Immi-

¹ See ch. 5, § 3(c) for definition of term "passport"; see ch. 33, § 18 for validity requirement for passports.

gration and Naturalization Service without notice. There is no appeal from a decision voiding the card. However, the voiding does not preclude a subsequent application for a visa or admission into the United States. (8 CFR 212.6(c))

§ 3. Exemptions from passport and visa requirements by statute or treaty.—The following classes of nonimmigrants are exempted by statute or treaty from the passport and visa requirements:

(a) An alien member of the armed forces of the United States who:

(1) is in the uniform of, or who bears documents identifying him as a member of, such armed forces,

(2) has not been lawfully admitted for permanent residence, and

(3) is making application for admission to the United States under official orders or permit of such armed forces. (Section 284 and 22 CFR 41.5(a))

(b) An American Indian born in Canada, having at least 50 per centum of blood of the American Indian race. (Section 289 and 22 CFR 41.5(b))²

(c) An alien leaving Guam, Puerto Rico or the Virgin Islands of the United States, and who seeks to enter the continental United States, or any other place under the jurisdiction of the United States. (Section 212(d)(7) and 22 CFR 41.5(c))³

(d) Personnel belonging to the land, sea or air armed services of a government which is a party to the North Atlantic Treaty and which has ratified the Agreement between the Parties to the North Atlantic Treaty regarding the status of their forces, signed at London on June 19, 1951, and entering the United States under the provisions of Article III of such Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending State or of the North Atlantic Treaty Organization. (22 CFR 41.5(d))⁴

² The term "American Indian born in Canada" does not include persons of less than 50 per centum of blood of the American Indian race who are the spouses or children of such Indians or whose membership in Indian tribes or families is created by adoption. This definition formerly contained in 8 CFR 1.1(b)(13) was deleted at the time immigration regulations were revised on November 26, 1956. (23 Fed. Reg. 9119)

³ See ch. 35.

⁴ See ch. 20, § 3.

(e) Personnel attached to an Allied Headquarters in the United States set up pursuant to the North Atlantic Treaty signed in Washington, D.C., on April 4, 1949, who belong to the land, sea or air armed services of a government which is a Party to the North Atlantic Treaty, and who are entering the United States in connection with their official duties under the provisions of the Protocol on the status of International Military Headquarters set up pursuant to the North Atlantic Treaty. (22 CFR 41.5(e))⁵

(f) Personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment. (22 CFR 41.5(f))

§ 4. Administrative waiver of passport and visa requirements.

—The requirement of passport or visa or both may be waived by the Secretary of State and the Attorney General acting jointly:

(a) on the basis of unforeseen emergency in individual cases; and

(b) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands,⁶ and residents thereof having a common nationality with such nationals; and

(c) in the case of aliens proceeding in immediate and continuous transit through the United States under a contract between the transportation line and the Immigration and Naturalization Service. (Section 212(d)(4))

Acting under this authority of law the Secretary of State and the Attorney General have waived by regulations for certain classes of nonimmigrants the passport and visa requirements, and for other classes the visa requirement only. These regulatory class waivers are described below.

⁵ See ch. 20, § 4.

⁶ "Contiguous territory" refers to Canada and Mexico. The term "adjacent islands" includes St. Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French and Netherlands territory or possessions in or bordering on the Caribbean Sea. (§ 101(b)(5)) It has been determined administratively that British Honduras is to be considered an "adjacent island."

§ 5. Canadian nationals and British subjects.**(a) Canadian nationals.**

(1) **Visa waiver.** A visa is not required in any case of a Canadian national.

(2) **Passport waiver.** A passport is not required of a Canadian national except after a visit outside of the Western Hemisphere.

(b) British subjects in Canada and Bermuda.

(1) **Visa waiver.** A visa is not required in any case of a British subject who has his residence in Canada or Bermuda.

(2) **Passport waiver.** A passport is not required of a British subject who has his residence in Canada or Bermuda except after a visit outside of the Western Hemisphere.

(c) **British subjects in Bahamas—Visa waiver.** A British subject who has his residence in the Bahamas is required to have a passport and a visa for admission to the United States except that a visa is not required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfies the examining United States immigration officer at Nassau, Bahamas, that he is clearly and beyond a doubt entitled to admission in all other respects.

(d) **British subjects in Cayman Islands—Visa waiver.** A visa is not required of a British subject who has his residence in, and arrives directly from, the Cayman Islands and who presents a certificate from the Clerk of Court of the Cayman Islands stating what, if anything, the Court's criminal records show concerning such subject, and a certificate from the Office of Administrator of the Cayman Islands stating what, if anything, its records show with respect to such subject's political associations and affiliations. (22 CFR 41.6(a) and 8 CFR 212.1(a))

§ 6. British, French and Netherlands nationals in Caribbean area—Visa waiver.—A visa is not required of a British, French or Netherlands national who has his residence in British, French or Netherlands territory, respectively, in the adjacent islands of the Caribbean area and who is proceeding to Puerto Rico or the Virgin Islands of the United States or who is proceeding to the United States as an agricultural worker. (22 CFR 41.6(b) and 8 CFR 212.1(b))

§ 7. Mexican nationals.

(a) **Visa and passport waiver.** A visa and a passport are not required of a Mexican national who is a military or civilian

official or employee of the Mexican national, state, or municipal government, or of a member of the family of any such official or employee; or is in possession of a border crossing card on Form I-186 and is applying for admission as described in Section 2 of this Chapter.

(b) **Visa waiver.** A visa is not required of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States; or is proceeding to the United States as an agricultural worker pursuant to Title V of the Agricultural Act of 1949, as amended. (22 CFR 41.6(c) and 8 CFR 212.1(c))

§ 8. Cuban nationals.

(a) **Visa and passport waiver.** A visa and a passport are not required of a Cuban national who is an official of the Cuban immigration service, or is a crewman serving on board a Cuban military or naval aircraft.

(b) **Visa waiver.** A visa is not required of a Cuban national who is a crewman employed on an aircraft belonging to a Cuban company authorized to engage in commercial transportation into the United States. (22 CFR 41.6(d) and 8 CFR 212.1(d))

§ 9. Aliens in bonded transit, "transits without visas"—Visa and passport waiver.—A visa and a passport are not required of aliens in bonded transit, also referred to as "transits without visas." These are aliens who are being transported in immediate and continuous transit through the United States in accordance with the terms of a contract, including a bonding agreement, between the transportation line and the Attorney General, under the provisions of Section 238(d). The purpose of the contract is to insure the alien's immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country. Excluded from the benefits of the visa and passport waiver for aliens in bonded transit are aliens who are citizens of Albania, Bulgaria, Communist-controlled China ("Chinese People's Republic"), Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, North Korea ("Democratic People's Republic of Korea"), North Viet-Nam ("Democratic Republic of Viet-Nam"), Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), or the Union of Soviet Socialist Republics, and residents of one of these countries. (22 CFR 41.6(e)(1) and 8 CFR 212.1(e))

The conditions and qualifications applicable to aliens seeking to transit the United States without visas, including those applicable to crewmen, are discussed in Chapter 27, Section 3.

§ 10. Foreign government officials in transit.—In the case of an alien who is an accredited official of a foreign government, or of a member of his family, or his attendant, servant, or personal employee, and who is proceeding in immediate and continuous transit through the United States, only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least thirty days from the date of his application for admission into the United States is required. (22 CFR 41.6(e)(2) and 8 CFR 212.1(e))

§ 11. Unforeseen emergency.—A visa and a passport are not required of a nonimmigrant who, either prior to his embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director of the Immigration and Naturalization Service in charge of the port of entry, after consultation with and concurrence by the Director of the Visa Office of the Department of State, that, because of an unforeseen emergency, he was unable to obtain the required documents. (22 CFR 41.6(f) and 8 CFR 212.1(f))

§ 12. Administrative waiver of passport and visa requirements by joint action of consular and immigration officers.—The requirement of passport or visa or both may be waived by joint action of consular officers abroad and immigration officers in individual cases of aliens who satisfy the consular officer serving the port or place of embarkation, after consultation with and concurrence by the appropriate immigration officer, that their cases come within any one of the following situations which are considered emergencies:

(a) **Visa and passport waiver; residents of contiguous territory.** The visa and passport requirement may be waived in the case of an alien having his residence in foreign contiguous territory who does not qualify for any of the waivers described above in Sections 5, 6, and 7 and who is a member of a visiting group or excursion proceeding to the United States under circumstances which make the timely procurement of a passport and visa impracticable. (22 CFR 41.7(a))

(b) **Passport waiver; aliens for whom passport extension facilities are unavailable.** The passport requirement may be waived in the case of an alien applying for a visa whose passport is valid for less than six months from the date of the expiration of the initial period of his admission or contemplated

initial period of stay, and who is embarking for the United States at a point or place remote from any foreign diplomatic or consular establishment at which the passport could be re-validated. (22 CFR 41.7(b))

(c) Passport waiver; aliens precluded from obtaining passport extensions by foreign government restrictions. The passport requirement may be waived in the case of an alien applying for a visa whose passport is valid for less than six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay, and whose government, as a matter of policy, does not revalidate passports more than six months in advance of their expiration or until they actually expire. (22 CFR 41.7(c))

(d) Visa waiver; certain aliens proceeding to the United States under emergent circumstances. The visa requirement may be waived in the case of an alien who is well and favorably known at the consular office, who has previously been issued a nonimmigrant visa which has since expired, and who is embarking on a direct journey to the United States under emergent circumstances which preclude the timely issuance of a visa. (22 CFR 41.7(d))

(e) Visa and passport waiver; members of armed forces of foreign countries making friendly visits to the United States. The visa and passport requirement may be waived in the case of an alien who is on active duty as a member of the armed forces of a foreign country, and who is a member of a group of such force which is making a friendly call in the United States, whether courtesy or operational and whether in behalf of his own government or in behalf of the United Nations, under advance arrangements made with the military, naval, or air force authorities of the United States, other than an alien who is a citizen or resident of Albania, Bulgaria, Communist-controlled China ("Chinese People's Republic"), Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, North Korea ("Democratic People's Republic of Korea"), North Viet-Nam ("Democratic Republic of Viet-Nam"), Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), or the Union of Soviet Socialist Republics. (22 CFR 41.7(e))

(f) Passport waiver; landed immigrants in Canada. The passport requirement may be waived in the case of an alien applying for a visa at a consular office in Canada:

(1) who is a landed immigrant in Canada,

(2) whose port and date of expected arrival in the United States are known, and

(3) who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity. (22 CFR 41.7(f))

(g) Visa and passport waiver; authorization to individual consular offices. The visa and passport requirement may be waived for an alien whose case falls within a category of cases for which the consular office where he applies for a visa has been authorized by the Department of State, because of unusual circumstances prevailing in its district, to join with immigration officers abroad in waivers of documentary requirements. (22 CFR 41.7(g))

CHAPTER 30

DIPLOMATIC AND OFFICIAL VISAS

SECTION.

1. Definition and significance.
2. Aliens eligible for diplomatic visas.
3. Aliens eligible for official visas.
4. Application for and issuance of diplomatic and official visas.
 - (a) Official visas.
 - (b) Diplomatic visas.
5. Procedure in issuing diplomatic and official visas.
6. Passport requirement.

§ 1. Definition and significance.—Three types of nonimmigrant visas have been established by statute and regulations: regular, diplomatic, and official visas. (Section 101(a)(11) and 22 CFR 41.100) A nonimmigrant visa of any classification is issued as a regular visa unless the alien falls within one of the classes entitled to a diplomatic or official visa and meets the other requirements for the issuance of such a visa. The classes of aliens entitled to these visas are described below.

Diplomatic and official visas are issued as a matter of comity in recognition of the position held by an alien in the government of a foreign country. Members of the immediate family of such an alien are usually issued the same type of visa as that issued to the principal applicant.

The requirement of personal appearance and the submission of photographs may be waived in the discretion of consular officers in the case of applicants for diplomatic or official visas; and, on a basis of reciprocity, these persons are exempt from the payment of a visa fee. (22 CFR 41.111(c), 41.114 and 41.121(b)) By comity, an alien holding an official or diplomatic visa is usually accorded preferential treatment at ports of entry. Otherwise, a diplomatic or official visa does not entitle its holder to any exemption from the requirements of the immigration laws or to other privileges or immunities in addition to those he derives from his nonimmigrant classification. For example, a career diplomatic officer who is the bearer of a diplomatic "A-1" visa is, on the basis of his classification as a foreign government official, but not as the bearer of a diplomatic visa, exempted from certain grounds of ineligibility to receive a visa as described in Chapter 35. On the other hand, the Chief Justice of the Supreme Court of a foreign country who is coming to the United States as a visitor for pleasure and who holds a diplomatic "B-2" visa must meet

the same qualifications for such a visa as a visitor for pleasure coming to the United States on a regular "B-2" visa, except for the discretionary waiver of personal appearance and presentation of photographs, and the waiver of the visa fee based on reciprocity. Diplomatic rights, privileges, exemptions, and immunities extend by treaty or comity only to foreign government officials in the "A" and "C-3" categories, to international organization aliens and to certain NATO officials and to the members of their immediate families irrespective of whether they are issued diplomatic, official, or regular visas.

§ 2. Aliens eligible for diplomatic visas.—An alien in one of the following categories is eligible to receive a diplomatic visa irrespective of the type of his nonimmigrant classification:

(a) An alien who is in possession of a diplomatic passport or its equivalent and who is within any of the following classes:

- (1) Heads of states and their alternates;
- (2) Members of a reigning royal family;
- (3) Governors-general, governors, high commissioners, and similar high administrative or executive officers of a territorial unit, and their alternates;
- (4) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;
- (5) Presiding officers of chambers of national legislative bodies;
- (6) Justices of the highest national court of a foreign country;
- (7) Ambassadors, public ministers, other officers of the diplomatic service and consular officers of career;
- (8) Military officers holding a rank not inferior to that of a brigadier general in the United States Army or Air Force and Naval officers holding a rank not inferior to that of a rear admiral in the United States Navy;
- (9) Military, naval, air and other attaches and assistant attaches assigned to a foreign diplomatic mission;
- (10) Officers of foreign government delegations to international organizations so designated by Executive Order;
- (11) Officers of foreign government delegations to, and officers of, international bodies of an official nature, other

than international organizations so designated by Executive Order;

(12) Officers of a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(13) Officers of foreign government delegations proceeding to or from a specific international conference of an official nature;

(14) Members of the immediate family of a principal alien who is within one of the classes described in subparagraphs (1) to (11) inclusive, of this paragraph;

(15) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in subparagraphs (12) and (13) of this paragraph;

(16) Diplomatic couriers proceeding to or through the United States in the performance of their official duties.

(b) Any other alien, irrespective of the type of passport he possesses, in whose case the Department of State specifically authorizes the consular officer to accept an application for a diplomatic visa. (22 CFR 41.102)

§ 3. Aliens eligible for official visas.—An alien in the following categories is eligible to receive an official visa irrespective of the type of his nonimmigrant classification:

(a) An alien within one of the following classes who is not eligible to receive a diplomatic visa:

(1) Aliens within a class described in Section 2 who are ineligible to receive a diplomatic visa because they are not in possession of a diplomatic passport or its equivalent;

(2) Aliens classifiable under Section 101(a)(15)(A);

(3) Aliens classifiable under Section 101(a)(15)(G), except those classifiable under Section 101(a)(15)(G)(iii) unless the government of which the alien is an accredited representative is recognized *de jure* by the United States;

(4) Foreign government officials in transit through the United States classifiable "C-3";

(5) Members and members-elect of national legislative bodies;

(6) Justices of the lesser national and the highest State courts of a foreign country;

(7) Officers and employees of national legislative bodies proceeding to or through the United States in the performance of their official duties;

(8) Clerical and custodial employees attached to foreign government delegations to, and employees of, international bodies of an official nature, other than international organizations so designated by Executive Order, proceeding to or through the United States in the performance of their official duties;

(9) Clerical and custodial employees attached to a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(10) Clerical and custodial employees attached to foreign government delegations proceeding to or from a specific international conference of an official nature;

(11) Officers and employees of foreign governments recognized *de jure* by the United States who are stationed in foreign contiguous territories or adjacent islands;

(12) Members of the immediate family, attendants, servants, and personal employees of, when accompanying or following to join, a principal alien who is within one of the classes referred to or described in subparagraphs (1) to (11) of this paragraph;

(13) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in subparagraphs (1) to (13) inclusive, of Section 2;

(b) Any other alien in whose case the Department specifically authorizes the consular officer to accept an application for an official visa. (22 CFR 41.104)

As a rule, highest ranking officials and the members of their immediate families are entitled to diplomatic visas, and lesser officials to official visas. The listing of certain high-ranking officials among those entitled to official visas does not preclude them from obtaining diplomatic visas if they qualify for them but serves the purpose of assuring the issuance of an official visa if such an official should not be entitled to a diplomatic visa. For example, a foreign consular officer not in possession of a diplomatic passport or its equivalent could be issued an

official visa unless the Department of State authorized specifically the issuance of a diplomatic visa.

§ 4. Application for and issuance of diplomatic and official visas.

(a) **Official visas.** Application for an official visa may be made at any diplomatic mission or consular office. Any consular officer is authorized to issue official visas. (22 CFR 41.110 (a) and 41.120(b))

(b) **Diplomatic visas.** Application for a diplomatic visa may be made outside the United States at a diplomatic mission or at a consular office authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant. (22 CFR 41.110(b)) In the United States application for diplomatic visas of the classifications specified below under (3) may be made to the Visa Office of the Department of State in Washington.

Diplomatic visas may be issued only by:

(1) A consular officer attached to a diplomatic mission of the United States if he is authorized to do so by the chief of the mission;

(2) A consular officer assigned to a consular office if so authorized by the Department of State or by the chief of the United States diplomatic mission to the foreign country in which the consular office is located; and

(3) The Visa Office of the Department of State in Washington, in the case of aliens who desire to reenter the United States in the nonimmigrant status specified in the visa, and who are foreign government officials entitled to an "A" visa, international organization aliens entitled to a "G" visa, treaty traders and investors entitled to an "E" visa, representatives of foreign information media entitled to an "I" visa, or NATO officials. (22 CFR 41.120)

§ 5. Procedure in issuing diplomatic and official visas.—The procedure in issuing diplomatic and official visas follows in general that prescribed for regular nonimmigrant visas.¹ As stated above, consular officers have authority to waive the requirement of personal appearance of the applicant and the requirement of the presentation of photographs. Also, based on reciprocity, diplomatic and official visas are issued without fee.

The form of a diplomatic and official visa is the same as the regular nonimmigrant visa described in Section 6 of Chapter

¹ See ch. 31.

31, except that it bears the title "Diplomatic" or "Official," respectively. (22 CFR 41.124(c) (2) and (3))

§ 6. **Passport requirement.**—The law does not contain special passport requirements in the case of aliens applying for official visas. An alien applying for a diplomatic visa is required to be in possession of a valid diplomatic passport, or the equivalent of a diplomatic passport, issued by a competent authority of a foreign government, except an alien in whose case the Department of State has specifically authorized the consular officer to accept an application for a diplomatic visa irrespective of the type of passport he holds.² The requirement of a passport, including a diplomatic passport, may be waived by the Secretary of State and the Attorney General acting jointly under the authority contained in Section 212(d) (4).³ (22 CFR 41.112(c))

A passport may be considered to be "equivalent of a diplomatic passport" if it is a national passport, other than a specifically described diplomatic passport, which is issued by a competent authority of a foreign government and which indicates the career diplomatic or consular status of the bearer, the issuing government being one which does not issue diplomatic passports to its career diplomatic and consular officers. (22 CFR 41.1)

The various countries, in general, issue diplomatic passports to persons enjoying diplomatic status by reason of the office they hold. In addition, many countries issue these passports as a matter of courtesy to certain present and former high officials and dignitaries and members of their immediate families. Hackworth describes the significance of a diplomatic passport as follows:

"A diplomatic passport serves both as a travel document and as a certification of the official identity of the bearer. It is designed to assure to the bearer the enjoyment of special privileges and immunities accruing to him on account of his official position. The transaction of business of a diplomatic character is therefore expedited, and the officials of the country in which the bearer of the passport is travelling are put on notice concerning his diplomatic status and his right to the enjoyment of the privileges and immunities flowing therefrom."⁴

In addition to issuing diplomatic passports many countries issue "special passports," "service passports," or "official passports," to officials and dignitaries not entitled to diplomatic passports. While the issuance of an official visa does not pre-

² See § 2, *supra*.

³ See ch. 29.

⁴ Green Haywood Hackworth, *Digest of International Law*, Vol. III, Washington 1942, p. 452.

suppose that the alien applying for it is the bearer of such a special, service, or official passport, it will be found that aliens entitled to official visas frequently are the bearers of passports within one of these categories.

CHAPTER 31

VISA PROCEDURE FOR NONIMMIGRANTS

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 - (e) Presumption of immigrant status and burden of proof.
 - (f) Documents required and considered in connection with application.
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 - (h) Unobtainable documents.
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 - (b) Examining physician.
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 - (a) Conditions of transfer.
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SECTION.

11. Replacement of erroneously issued visa.
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 - (c) Procedure in revoking or invalidating visa.
 - (1) Notice of intended action.
 - (2) Act of revocation and invalidation.
 - (3) Cancellation.
 - (4) Notice of revocation.

§ 1. Application for nonimmigrant visa.

(a) **Form of application.** The application for a nonimmigrant visa is made on Form FS-257. In the application the alien has to state his full and true name; date and place of birth; nationality; race and ethnic classification; personal description, including height, complexion, color of hair and eyes, and marks of identification; marital status; and purpose and length of his intended stay in the United States.

In addition, an applicant may also be required to submit Form 257 AF, "Statement In Support Of Nonimmigrant Visa Application." The submission of this form will be required in cases in which the information contained on the basic application Form FS-257 is not sufficient to establish the applicant's eligibility to receive a visa.

The requirement that the alien state his race and ethnic classification does not pertain to his religion. (Section 222(c) and 22 CFR 41.115(a) and (c))

(b) **Application required for each alien.** Every nonimmigrant has to make a separate application for a visa. In the case of an alien under sixteen years of age, or one physically incapable of making an application, the application may be made by his parent or guardian, and, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, such alien. (22 CFR 41.115(a))

(c) **Personal appearance—Exceptions.** As a rule, an applicant for a nonimmigrant visa has to appear in person before a consular officer. This requirement of personal appearance may be waived in the discretion of the consular officer in the case of:

- (1) foreign government officials including those in transit,
- (2) international organization aliens,
- (3) NATO officials in classes NATO-1, NATO-2, NATO-3, NATO-4 and NATO-6,
- (4) applicants for diplomatic visas,

- (5) applicants for official visas, and
- (6) children under ten years of age. (22 CFR 41.114)

If personal appearance is waived the application form will be completed by the consular officer from available information relating to the alien. (22 CFR 41.114)

(d) Place of application.

(1) Outside of the United States. An alien applying for a nonimmigrant visa, as a rule, has to make his application at a United States consular office in the consular district in which he has his residence. However, a consular officer has discretionary authority to accept an application for a nonimmigrant visa from an alien who has no residence in his consular district but who is physically present therein; in such case, the consular officer may also be directed by the Secretary of State to accept the application. (22 CFR 41.110(a))

(2) In the United States. The following classes of aliens in the United States who intend, after a temporary absence, to reenter the United States may apply for the issuance or the revalidation of a visa to the Visa Office of the Department of State in Washington:

- (i) Foreign government officials,
- (ii) International organization aliens,
- (iii) NATO officials,
- (iv) Representatives of information media,
- (v) Treaty traders and investors. (22 CFR 41.120)

(e) Presumption of immigrant status and burden of proof. An applicant for a nonimmigrant visa is presumed to be an immigrant until he establishes to the satisfaction of the consular officer that he is entitled to a nonimmigrant status. The burden of proof is upon the applicant to establish that he is entitled to the nonimmigrant classification and type of nonimmigrant visa for which he applies. (Sections 214(b), 221(g), 291, and 22 CFR 41.10)

(f) Documents required and considered in connection with application. The visa applicant may be required to submit such documents as the consular officer considers necessary to establish the applicant's eligibility to receive a nonimmigrant visa. All such documents submitted and any other evidence adduced by the alien will be given consideration by the consular officer, including briefs submitted by attorneys or other representatives. (22 CFR 41.111(a))

(g) Police certificates. If the consular officer has reason to believe that the applicant has a police or criminal record, he

may require the presentation of a police certificate issued by the police or other appropriate authorities stating what their records show concerning the alien. No police certificate will be required in the case of certain

- (1) foreign government officials,
- (2) international organization aliens, and
- (3) NATO officials. (22 CFR 41.111(d))

(h) Unobtainable documents. If the alien establishes that any of the required documents or records is unobtainable he may be permitted by the consular officer to submit instead other satisfactory evidence of the fact to which the document or record would pertain. A document or other record is considered unobtainable if it cannot be procured without causing the applicant or a member of his family actual hardship other than normal delay and inconvenience. (22 CFR 41.111(b))

§ 2. Medical examination.

(a) Requirement. An applicant for a nonimmigrant visa will be required to be medically examined if:

(1) he is an applicant for an exchange visitor visa¹ who does not qualify as a leader in a field of specialized knowledge or skill and intends to remain in the United States for more than a brief period of time,

(2) he is an applicant for a student visa² who intends to remain in the United States for more than a brief period of time,

(3) he is coming from an area or is in a nonimmigrant status which indicates that a medical examination is advisable, or

(4) the consular officer has reason to believe that a medical examination would disclose that the alien is ineligible to receive a visa. (22 CFR 41.113(a))

(b) Examining physician. At consular offices where medical officers of the United States Public Health Service are on duty the alien's examination will be conducted by these officers. At other consular offices the required examination will be conducted by a physician selected by the alien from a panel of physicians approved by the consular officer. (22 CFR 41.113(b))

¹ See ch. 23.

² See ch. 22.

(c) **Laboratory tests.** When the medical examination of an alien requires tests for which laboratory facilities are not available, the consular officer will inform the alien that the tests must be made at the United States port of entry and may be a basis for the alien's exclusion. (22 CFR 41.113(c))

(d) **Medical notification—Classes.** If an alien is examined and found to have a physical or mental defect, disease or disability, the examining physician reports his findings to the consular officer by a medical notification. Depending on the seriousness of the condition, a Class "A," Class "B" or Class "C" notification is issued.

(1) **Class "A" notification.** A Class "A" notification is issued with respect to aliens who are mandatorily inadmissible because they:

- (i) are feeble-minded, or insane, or have had one or more attacks of insanity,
- (ii) are afflicted with psychopathic personality, epilepsy, or a mental defect,
- (iii) are narcotic drug addicts or chronic alcoholics,
- (iv) are afflicted with tuberculosis in any form, leprosy, or any other dangerous contagious disease.

A Class "A" notification is not issued if an alien has only mental shortcomings due to ignorance, or is suffering only from a mental condition attributable to remediable physical causes, or from a psychosis of a temporary nature, caused by a toxin, drug, or disease. (42 CFR 34.7)

(2) **Class "B" notification.** A Class "B" notification is issued in the case of an alien who has a physical defect, disease or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical well-being. (42 CFR 34.8)

(3) **Class "C" notification.** A Class "C" notification is issued in the case of an alien who has a defect, disease or disability other than one for which a Class "A" or Class "B" notification is required. (42 CFR 34.10)

§ 3. Photographs.

(a) **Requirement.** With the application for a nonimmigrant visa an alien, as a rule, has to furnish identical photographs of himself in such number as required in the discretion of the consular officer. The photographs must reflect a reasonable likeness of the alien as of the time they are furnished. They are required to be 1½ by 1½ inches in size, unmounted, with-

out head covering, have a light background, and clearly show a full front view of the facial features of the alien. They must be signed with the full name of the applicant without obscuring his features. (Section 221(b) and 22 CFR 41.111(c))

(b) **Exceptions.** The photograph requirement may be waived at the discretion of the consular officer in the case of:

- (1) foreign government officials,
- (2) international organization aliens,
- (3) NATO officials in classes NATO-1, NATO-2, NATO-3, NATO-4 and NATO-6,
- (4) applicants for diplomatic visas,
- (5) applicants for official visas, and
- (6) children under sixteen years of age. (22 CFR 41.111(c))

§ 4. **Registration and fingerprinting.**—The statute establishes the basic requirement that each alien who applies for a non-immigrant visa be registered and fingerprinted in connection with his application. (Section 221(b)) The Secretary of State has discretionary authority to waive the registration and fingerprinting requirement for foreign government officials, international organization aliens and aliens who are granted diplomatic visas; the Secretary of State and the Attorney General are authorized to waive, on a basis of reciprocity, the fingerprinting requirement in the case of other nonimmigrants. (Section 221(b) and Act of September 11, 1957, Section 8)³

The fingerprinting requirement has been waived under this authority in the case of:

- (a) foreign government officials,
- (b) international organization aliens,
- (c) aliens granted diplomatic visas, and
- (d) other nonimmigrants, on the basis of existing reciprocity, i.e., they are fingerprinted only if they are nationals of a country whose government requires fingerprinting of nationals of the United States in connection with an application for or the issuance of, a visa, who intends to proceed to such country for a similar purpose. (22 CFR 41.116(b)) Aliens listed above under (a) through (c) are also exempted from the registration requirement.

Since no foreign country at this time fingerprints American citizens applying for nonimmigrant visas, the requirement for

³ 71 Stat. 641, 8 U.S.C. 1201a, F.C.A. 8 § 1201a.

the fingerprinting of all applicants for nonimmigrant visas has been waived on a basis of reciprocity.

The registration of an alien is accomplished by the execution of nonimmigrant visa application Form FS-257. (22 CFR 41.116(a))

An alien may be required by the consular officer to have a set of his fingerprints taken if this procedure is considered necessary for the purpose of identification or investigation when the alien makes a preliminary or informal application for a visa. (22 CFR 41.116(b)(3))

When required, the fingerprints of a visa applicant will be taken on Form AR-4, "Alien Registration Fingerprint Card," or in such other manner as may be authorized by the Department of State. (22 CFR 41.116(b)(2) and (3))

§ 5. Passport requirement.—As stated in Chapter 29, an applicant for a nonimmigrant visa, as a rule, is required to possess a passport valid for a minimum period of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay in the United States. (Section 212(a)(26))⁴

The passport requirement may be met by the presentation of a passport including more than one person if such inclusion is authorized under the laws and regulations of the issuing authority and if a photograph of each person sixteen years of age or over to whom a visa is to be issued has been attached to the passport by the issuing authority. (22 CFR 41.112)

§ 6. Issuance of nonimmigrant visa.

(a) Place of issuance.

(1) Outside of the United States. Any consular officer attached to a diplomatic mission or consular office is authorized to issue regular and official visas.⁵ Diplomatic visas may be issued only by a consular officer attached to a diplomatic mission and at consular offices specifically authorized to issue diplomatic visas. (22 CFR 41.120(b))

(2) In the United States. The Visa Office of the Department of State in Washington is authorized to issue nonimmigrant visas, including diplomatic visas, or to revalidate nonimmigrant visas, to aliens in the United States who are within one of the following classes and intend to reenter the United States in the nonimmigrant status specified in the visa:

⁴ For a definition of the term "passport," see ch. 5, § 3. Exceptions from the passport requirement are discussed in chs. 18, 19, 20 and 29. See ch. 33, § 17 concerning the validity of passports extended by agreement.

⁵ See Appendix D for the list of visa-issuing offices.

- (i) Foreign government officials,
- (ii) International organization aliens,
- (iii) NATO officials,
- (iv) Representatives of information media,
- (v) Treaty traders and investors. (22 CFR 41.120(a))

(b) **Form of nonimmigrant visa—Visa stamp.** If a consular officer is satisfied that an applicant is a nonimmigrant and is otherwise qualified to receive a visa, he will issue a nonimmigrant visa by placing a stamp in the alien's passport. The appropriate visa symbols described in Chapter 17, showing the classification of the nonimmigrant, will be inserted in the visa stamp.

Under the following circumstances the visa stamp will be placed on a form prescribed by the Department of State, to which a photograph of the alien is attached, instead of being placed in the passport:

- (1) the alien's passport was issued by a government with which the United States has not entered into formal diplomatic relations, unless the Department of State has specifically authorized the insertion of the visa stamp in such passport;
- (2) the alien's passport does not provide sufficient space for the visa stamp; or
- (3) the passport requirement has been waived. (22 CFR 41.124(b))

As a rule, the visa stamp will appear in the following form (22 CFR 41.124(c)):

[SEAL]	No..... [Title of office] [Location]
NONIMMIGRANT VISA	
Classification:	
Date:	
Valid if presented before	
for applications for admission into the United States.	
Issued to:	
.....	
.....	
.....	
.....	
(Name and title of consular officer)	

(c) **Insertions and notations.** In the case of an alien who derives status from a principal alien, such as in the case of a family member of a foreign government official, the name and position of the principal alien will be written below the lower margin of the visa stamp. (22 CFR 41.124(d))

If a nonimmigrant visa is valid for admission only at a specific port or ports of entry, the name or names of such port or ports will be entered below the expiration date of the visa. (22 CFR 41.124(f))

If the spouse and unmarried minor children of a principal alien are included in one passport, a single nonimmigrant visa may be issued to include all eligible family members. In such case the name of each family member will be written in the space provided in the visa stamp. However, each alien must execute a separate application. (22 CFR 41.123)

(d) **Delivery of visa.** The consular officer who issues a non-immigrant visa affixes his signature, indicates his title, and impresses the seal of his office in the visa stamp. (22 CFR 41.124(h)) In issuing the visa the consular officer delivers the visaed passport, or, where applicable, the prescribed form which bears the visa, to the alien, or to his authorized representative if personal appearance has been waived. The visa application forms are retained in the consular office. However, the alien will be given the original of all supporting documents for presentation to the immigration authorities at the port of entry. (22 CFR 41.124(i) and (j))

§ 7. Validity of nonimmigrant visa.

(a) **Period of validity.** The period of validity of a nonimmigrant visa relates to the period during which the alien to whom the visa is issued may make application for admission into the United States. It has no relation to the period of admission, i.e., the time the alien is permitted to stay in the United States, which is determined by officers of the Immigration and Naturalization Service when the alien, upon his arrival at a port of entry, is admitted to the United States. (22 CFR 41.122(a) and (b))

(b) **Validity based on reciprocity.** The validity of a non-immigrant visa is prescribed by the Secretary of State for a period which corresponds, as nearly as practicable, to the period of validity of visas issued by the government of the country of which the alien is a national or stateless resident to United States nationals of a similar class entering that country. In no case may the period of validity exceed forty-eight months. The number of applications for admission for which the visa is made valid, is also governed by reciprocity.

If the government of the country of which the alien is a national or a stateless resident requires no visas of United States nationals of a similar class proceeding to that country, the visa is made valid for the maximum period of forty-eight months and for an unlimited number of applications for admission. (22 CFR 41.122(c))

(c) Restrictions on validity. If warranted in an individual case, a consular officer may issue a nonimmigrant visa for:

(1) a period of validity which is less than that prescribed on a basis of reciprocity,

(2) a number of applications for admission within the period of the validity of the visa which is less than that prescribed on a basis of reciprocity,

(3) application for admission at a specified port or specified ports of entry, or

(4) for use on or after a given date subsequent to the date of issuance. (22 CFR 41.122(d))

If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "Unlimited" is inserted in the space provided in the visa stamp. Otherwise, the appropriate number is inserted in word form.

(d) Validity of visa and passport. The period of validity for which a visa may be issued is not affected by the period of validity of the passport in which the nonimmigrant visa stamp is placed, as long as the passport's validity exceeds six months sufficiently to fulfill the requirements for the validity of a passport described in § 5. For example, a nonimmigrant who desires to visit the United States for two months on a particular trip, and who plans to arrive at a port of entry of the United States within one month, may be issued a nonimmigrant visa valid for a period of forty-eight months if he is entitled to such visa under existing reciprocity although his passport, at the time of visa issuance, is valid for only nine months. If in this case the holder of a forty-eight months visa wishes to apply for admission after the expiration of the passport in which the visa stamp was placed, he may fulfill the visa and passport requirements by presenting two or more documents, one of which bears the visa while the other or others fulfill the passport requirement. In such case the alien's valid passport must show, however, that he possesses the same nationality as he did when the visa was issued to him.

§ 8. Visa fees. Unless, on a basis of reciprocity, no fee is chargeable, the fee for the issuance of a nonimmigrant visa,

as nearly as practicable, corresponds to the total of all similar visa, entry, residence, or other fees, taxes or charges assessed or levied against nationals of the United States in connection with their entry or sojourn by the foreign country of which such aliens are nationals or stateless residents. (Section 281 and 22 CFR 41.121(a))

For the guidance of consular officers, the Department of State publishes schedules showing existing reciprocity, if any, of visa fees for the various classes of nonimmigrants extended by foreign countries. These schedules are revised as changes occur.

Upon a basis of reciprocity, or, as provided in Section 13(a) of the Headquarters Agreement with the United Nations,⁶ no fee is collected for the issuance of a nonimmigrant visa to an alien of any of the following classes:

- (a) foreign government officials, including foreign government officials in transit,
- (b) international organization aliens,
- (c) aliens in transit to the United Nations Headquarters District,
- (d) NATO aliens, and
- (e) nonimmigrants who are issued diplomatic visas. (22 CFR 41.121(b))

When more than one alien is included in a single visa, the visa fee to be collected is equal to the total of the fees prescribed for each alien included in the visa unless, upon a basis of reciprocity, a lesser fee is chargeable. (22 CFR 41.123)

§ 9. Revalidation of nonimmigrant visa.

(a) **Authority.** A nonimmigrant visa may be revalidated in the same classification if:

- (1) the alien's nationality is the same,
- (2) the visa was originally issued for less than the maximum period of validity of forty-eight months or for less than unlimited applications for admission, or both,
- (3) the visa is about to expire, or has expired, or has become invalid by reason of having been used for the number of applications for admission specified therein, and
- (4) the consular officer is satisfied that the alien is a bona fide nonimmigrant and is otherwise eligible to receive a nonimmigrant visa. (22 CFR 41.125(a))

⁶ 61 Stat. 761, 22 U.S.C. 287, note; F.C.A. 22 § 287 note.

(b) **Period of validity.** A nonimmigrant visa may be revalidated any number of times for the period and number of applications for admission prescribed on the basis of reciprocity, but its validity may not exceed a total of forty-eight months from the date of its original issuance.

(c) **Place of revalidation.** Revalidation may take place at the original visa-issuing office or at another consular office. It is not required that the alien applying for the revalidation be physically present in the district of the consulate at which the request for the revalidation is made.

If the visa is revalidated at an office other than the one which issued the original visa, the office of the original issuance must be notified. (22 CFR 41.125(c))

(d) **Waiver of personal appearance.** Personal appearance may be waived in the discretion of the consular officer in connection with the application for revalidation. (22 CFR 41.125(b))

(e) **Form of revalidation.** A new visa application Form FS-257 is not required in connection with the revalidation. A visa is revalidated by placing the visa stamp in the alien's passport, or on official stationery, and by the insertion of the word "Revalidated" on the upper margin of the visa stamp. All pertinent data contained in the original visa will be transferred to the revalidated visa. (22 CFR 41.125(c))

(f) **Fee.** The fee for the revalidation of the visa is the same, if any, as that prescribed for the issuance of the original visa. However, when the original visa was issued valid for a lesser number of applications for admission, or for a period of validity less than the maximum permitted by reciprocity, it will be revalidated, without additional fee, for the remaining number of applications for admission and validity permitted. (22 CFR 41.125(d))

§ 10. Transfer of visa to new passport.

(a) **Conditions of transfer.** A valid nonimmigrant visa may be transferred from one travel document to a different travel document if:

- (1) the bearer of the visa requests the transfer,
- (2) he is found eligible to receive such a visa,
- (3) he has the same nationality he had when the visa was issued,
- (4) the new travel document is valid for the required period, and

(5) the travel document containing the original visa has not been stolen or lost. (22 CFR 41.126(a))

(b) **Procedure.** No formal application is required for the transfer of a nonimmigrant visa from one travel document to another. Personal appearance of the applicant may be waived by the consular officer. The issuance of a transferred visa is evidenced by placing the regular visa stamp in the alien's new travel document with the word "Transferred" on the upper margin of the visa stamp.

If the visa is transferred at an office other than the one which issued the original visa, the office of original issuance will be notified of the transfer. (22 CFR 41.126(b))

It is not required that the alien applying for the transfer is physically present in the district of the consulate at which the request for the transfer is made.

(c) **Cancellation of original visa.** Once a visa is transferred to a new travel document the visa issued in the original passport will be cancelled unless the passport has been surrendered to the issuing authority. If the visa is transferred for only one of several persons included in it, only the name of that person will be stricken from the visa originally issued. (22 CFR 41.126(c))

(d) **Validity and fee.** The transferred visa is validated for the same period as the original visa and for the number of applications for admission remaining as of the date of the transfer. No fee is charged for the transfer of a valid nonimmigrant visa. (22 CFR 41.126(b) and (d))

§ 11. Replacement of erroneously issued visa.—A nonimmigrant visa, once issued and signed, may not be amended or altered. If a visa was erroneously issued in relation to any item which appears in the visa stamp, it will be cancelled and replaced by a corrected visa. No fee will be charged for a visa so replaced unless an incorrect fee was originally charged. The procedure described for the transfer of visas will be followed except that the word "Corrected" will be inserted instead of the word "Transferred." (22 CFR 41.124(k))

§ 12. Revocation and invalidation of nonimmigrant visa.⁷

(a) **Revocation.** After the issuance of a visa to a nonimmigrant, the consular officer or the Secretary of State may at any time, in his discretion, revoke the visa. (Section 221(i)) Visa

⁷ The visa refusal and its review are discussed in ch. 36.

regulations implement this statutory authority by prescribing that a consular officer may revoke a nonimmigrant visa under the following circumstances:

(1) if he knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means, or

(2) if he obtains information establishing that the alien was otherwise ineligible to receive the visa at the time of issuance.

The revocation invalidates the visa *ab initio*. (Section 221(g) and 22 CFR 41.134(a))

(b) **Invalidation.** A consular officer may invalidate a nonimmigrant visa in any case in which he finds that the alien has become ineligible for such a visa. The invalidation terminates the validity of the visa as of the date of the invalidation. (22 CFR 41.134(b))

(c) **Procedure in revoking or invalidating visa.**

(1) **Notice of intended action.** If practicable, the bearer of a nonimmigrant visa which is being considered for revocation or invalidation is notified of the proposed action and given opportunity to show cause why his visa should not be revoked or invalidated. He will also be requested to present his travel document containing the visa. (22 CFR 41.134(c))

(2) **Act of revocation and invalidation.** The visa can be revoked or invalidated irrespective of whether the officer taking this action has physical possession of the visa. In other words, the failure of an alien to present his visa for cancellation does not affect the validity of any action taken to revoke or invalidate the visa. A nonimmigrant visa may be revoked or invalidated regardless of the fact that the alien may be in the United States at the time the action is taken. (22 CFR 41.134(c)(2)) The action of revocation or invalidation can be effected at the issuing office or any other consular office or the Department of State.

(3) **Cancellation.** A nonimmigrant visa which is revoked or invalidated is cancelled by writing the word "Revoked" or "Invalidated," whichever is applicable, across the face of the visa. The officer taking the action is also required to date and sign the cancellation. As stated already, the validity of the revocation or invalidation is not affected if the visa is not presented for cancellation. (22 CFR 41.134(c)(1))

(4) **Notice of revocation.** Unless the visa has been cancelled as described under (3), notice of revocation or invalida-

tion is given the transportation line on which the alien intends to travel. If the action was taken by the Department of State or by a consular office other than the issuing office, the consular office which issued the visa is notified of the revocation or invalidation. The Attorney General is given notice of the revocation or invalidation through the Department of State unless the visa has been cancelled before the alien's departure for the United States. (22 CFR 41.134(c) (2), (3) and (4))

CHAPTER 32

THE ADMISSION OF NONIMMIGRANTS

SECTION.

1. Summary.
2. Time for which nonimmigrants may be admitted.
3. Conditions of admission as nonimmigrant.
4. Departure and maintenance-of-status bond.
5. Extension of period of temporary admission.
 - (a) Summary.
 - (b) Conditions.
 - (c) Procedure in applying for extension of stay.
 - (1) Place and form of application.
 - (2) Fee.
 - (3) Decision on application.

§ 1. Summary.—The determination of whether an alien may be admitted to the United States rests with the Immigration and Naturalization Service. Every alien arriving at a port of entry of the United States is examined by one or more immigration officers who will either admit the alien or exclude him. The procedures followed in connection with the admission and exclusion of an alien is similar in the case of nonimmigrants and immigrants and is more fully described in Chapter 37.

The issuance of a visa to a nonimmigrant is no guarantee of his admission. In other words, the bearer of a nonimmigrant visa may be refused admission if on his arrival at a port of entry in the United States the Immigration and Naturalization Service finds him inadmissible under law or regulations. (Section 221(h))

Few aliens who have been issued valid visas are actually excluded from admission at the time they arrive in the United States. Aliens so excluded are mostly those in whose case information was withheld from American consular officers abroad which, had it been known, would have led to a refusal of the visa. In other cases aliens have become inadmissible following the issuance of a visa, for example, by contracting an excludable disease which did not exist at the time the visa was issued. The majority of aliens excluded at ports of entry are those who arrive without visas.¹

§ 2. Time for which nonimmigrants may be admitted.—The period for which a nonimmigrant may initially be admitted to the United States is whatever period the admitting immigra-

¹ See ch. 50 for table: "Aliens Excluded from Admission into the United States."

tion officer considers necessary for the alien to accomplish the intended purpose of his temporary stay.² (Section 214(a) and 8 CFR 214.1)

The period of validity of a nonimmigrant visa has no relation to the period of time an alien may be permitted to stay or remain in the United States. The validity period of the visa relates only to the period within which the alien may make application for admission into the United States. (22 CFR 41.122(a)) In other words, a nonimmigrant may be admitted to the United States for a period which exceeds that of the validity of his visa and, conversely, he may be admitted for a period which is less than that of the validity of his visa. For example, an alien in possession of a visitor visa valid for four years can apply for admission at a port of entry at any time during these four years, but the period for which he is admitted may, depending on the purpose of his visit, be limited to three months. On the other hand, a nonimmigrant in possession of a nonimmigrant visa may be admitted in a given case for six months although the validity of the visa expires the day after his admission.³

§ 3. Conditions of admission as nonimmigrant.—If a nonimmigrant is found qualified he is admitted to the United States under the condition that he agrees to:

(a) abide by all the terms and conditions of his admission, and

(b) depart from the United States at the expiration of the period of his admission or extension, or on abandonment of his authorized nonimmigrant status. (8 CFR 214.1)

All nonimmigrants are put on notice that they may not engage in employment without permission of the Immigration Service by Form I-358 which is routinely handed nonimmigrants at the time of their admission.⁴

² The fixed limits for the initial period of admission for each class of nonimmigrants previously contained in immigration regulations were eliminated in 1958. (23 Fed. Reg. 5818, August 1, 1958) Depending on the particular class of nonimmigrant and the alien's plans in the United States, these regulatory limits varied from three months to one year. For details see chs. 16 through 25 of First Edition.

Foreign government officials, international organization aliens and NATO aliens, except their servants, attendants and personal employees, are admitted for the period of time during which the Secretary of State continues to recognize them as members of their class.

³ See also ch. 31, § 7.

⁴ Prior to the amendment of immigration regulations on August 1, 1958 (see footnote 2, *supra*) the conditions of admission were more fully defined by regulations. The fact that the prohibition against employment without specific permission was transferred from regulations to informational material, i.e., Form I-358, "did nothing to change the requirements for admission as a nonimmigrant." (BIA, *In the Matter of S.*, Interim Decision 1055, February 24, 1960)

§ 4. Departure and maintenance-of-status bond.—An alien applying for admission to the United States as a nonimmigrant may be required to post a bond of not less than \$500 as a condition of his admission to the United States to insure that he will depart from the United States at the expiration of the time for which he is admitted and that he will maintain the status under which he was admitted. (8 CFR 214.1)

§ 5. Extension of period of temporary admission.

(a) **Summary.** Nonimmigrants, with the exceptions stated below, may apply to the Immigration and Naturalization Service for an extension of the period of their original admission and of a period of extension previously granted.

(b) **Conditions.** An extension of stay will be granted only if the alien:

- (1) is still admissible to the United States, unless a ground of inadmissibility has been waived,
- (2) presents a passport valid for the required period,⁵ and
- (3) agrees to the conditions generally imposed at the time of admission as described in Sections 3 and 4.

(c) **Procedure in applying for extension of stay.**

(1) **Place and form of application.** An application for extension of stay must be submitted on Form I-539 to the immigration office having jurisdiction over the applicant's place of stay. A separate application must be executed for each alien except that a child under fourteen years of age may be included in the application of an accompanying parent. (Form I-539, Instructions)

(2) **Fee.** A fee of \$10 must accompany each application. No fee is required in the case of students, exchange visitors, and attendants, servants, personal employees and members of the immediate families of certain foreign government officials and employees. If an application includes a child or children under fourteen years of age of an accompanying parent as stated under (1), only one fee is required. (Section 281(5) and Instructions, Form I-539)

(3) **Decision on application.** The district director or the immigration officer in charge receiving an application for extension may grant or deny it. No appeal lies from his decision. If the application is denied the applicant will be informed that his departure from the United States is required within the period determined by the officer making the decision. (8 CFR 214.1)⁶

⁵ See ch. 3, § 18.

⁶ For special procedure applicable to application for extension of stay in the case of exchange visitors see ch. 23, § 8.

PART IV
INADMISSIBLE ALIENS

CHAPTER 33

CLASSES OF INADMISSIBLE ALIENS

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 - (c) Meaning of membership—Exception for involuntary members.
 - (d) Exception for defectors.
26. Aliens seeking to enter to engage in prejudicial activities.
- (a) Definition.
 - (b) Scope.
27. Aliens likely to endanger public safety through subversive activities.
- (a) Definition.
 - (b) Scope.
28. Former exchange visitors.
- (a) Temporary disqualification.
 - (b) Waiver of foreign-residence requirement.
29. Aliens immediately deportable upon entry.
30. Aliens unable to establish nonimmigrant status.
31. Failure of visa application to comply with law or regulations.
32. Executive restriction and suspension of entry and departure of aliens.
- (a) Entry and departure control during war or national emergency.
 - (1) Departure control.
 - (2) Entry control.
 - (3) Penalties.
 - (b) Entry control in the interest of the United States.

§ 1. **Summary.**—While quantitative controls over the admission of aliens into the United States apply only to quota immigrants as described in Chapter 8, qualitative restrictions apply to quota immigrants and nonquota immigrants, as well as to nonimmigrants. The general classes of aliens ineligible to receive visas and excluded from admission are listed in Section 212 of the Immigration and Nationality Act the text of which is appended.¹ These classes include aliens ineligible for medical grounds, moral defects, criminal activities, membership in certain subversive organizations, advocacy of subversive doctrines, economic disqualification, and illiteracy. A visa may be refused to an alien only upon a ground specifically set out in the law.

Grounds making an alien inadmissible into the United States, as stated already, apply in general to both immigrants and nonimmigrants. However, some grounds, such as illiteracy and polygamy, apply only to immigrants. In addition, most other grounds except those relating to the more serious security grounds may

¹ See Appendix A.

be waived by discretionary administrative action in the case of nonimmigrants. Foreign government officials and international organization aliens and certain NATO officials are exempted by statute or treaty from most of the grounds of inadmissibility except certain grounds relating to security.

In the case of immigrants, exceptions from the applicability of the qualitative grounds of ineligibility apply in consideration of existing close relationships to American citizens or to permanent resident aliens, the alien's reformation or the fact that he is a returning resident alien or a refugee from religious persecution. Some of these exceptions come into play as soon as it is established that the statutory conditions for the exceptions have been met; others require the exercise of administrative discretion by one or more of the agencies administering the immigration law. For example, once it is established that an applicant for an immigrant visa is the parent of an American citizen, the provisions rendering an applicant for an immigrant visa ineligible because of illiteracy do not apply. On the other hand, if this alien parent of an American citizen is ineligible to receive a visa because in the past he has sought to procure a visa by fraud or misrepresentation, this ground of ineligibility will become inoperative only upon the alien's application for a discretionary waiver by the Attorney General.

While at the time of the enactment of the Immigration and Nationality Act in 1952, Congress entrusted discretionary authority for the admission of ineligible aliens to the administrative agencies mainly in the case of nonimmigrants and reserved to itself the right to waive the disability in the case of an individual immigrant by means of private legislation,² there has been a tendency in more recent legislation to place increasing responsibility in the Attorney General also in the case of immigrants.

The various classes of aliens ineligible to receive visas and inadmissible to the United States are discussed in the following sections. While each section will refer also to the applicable exceptions to the rule of ineligibility, the various procedures applicable to the admission of otherwise inadmissible aliens are explained in Chapter 34.

§ 2. Mentally and physically defective aliens.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if they:

² See ch. 49.

- (1) are feeble-minded;
- (2) are insane;
- (3) have had one or more attacks of insanity;
- (4) are afflicted with psychopathic personality, epilepsy, or a mental defect;
- (5) are narcotic drug addicts or chronic alcoholics; or
- (6) are afflicted with tuberculosis in any form, leprosy, or any dangerous contagious disease. (Section 212(a)(1), (2), (3), (4), (5), and (6))

A determination of ineligibility to receive a visa for one of the grounds listed under (1) through (6) must, as a rule, be based on the finding of a competent medical examiner. However, in the case of an alien who applies for a visa at a consular office where no medical officer of the United States Public Health Service has been assigned or detailed, a finding of ineligibility for the grounds listed under (4) or (5) may be based on facts or circumstances other than the finding of an examining physician if the consular officer knows or has reason to believe that the alien is a drug addict, a chronic alcoholic, or is afflicted with psychopathic personality by reason of sexual deviation. (22 CFR 41.91(a)(1)-(6) and 42.91(a)(1)-(6))

The admission of a nonimmigrant inadmissible for any of the grounds described under (1) through (6), and the admission of immigrants suffering from tuberculosis who are close relatives of American citizens and permanent resident aliens may be authorized upon the exercise of administrative discretion.³

(b) Feeble-minded aliens. Feeble-mindedness is an inclusive generic term represented by subclasses of idiots, imbeciles, morons, and persons of borderline intelligence.⁴

(c) Aliens afflicted with psychopathic personality. The conditions classified within the group of psychopathic personalities

³ See ch. 34, §§ 3, 4. The War Brides Act of December 28, 1945 (59 Stat. 659) which waived for the benefit of alien spouses and children of American citizens serving in, or having been honorably discharged from, the Armed Forces of the United States, the provisions of the immigration law excluding physical and mental defectives, also provides that any alien admitted under its terms "who at any time returns to the United States after a temporary absence abroad shall not be excluded because of the disability or disabilities that existed at the time of that admission." Consequently, an alien within the purview of this provision, who applies now for a visa or admission into the United States, is not ineligible to receive a visa or excludable from admission for a mental or physical defect which existed at the time of original admission under the War Brides Act.

⁴ Report of the Public Health Service on Certain Medical Aspects of H.R. 2379, House Report No. 1365, 82nd Congress, Second Session, p. 46; see also Senate Report No. 1137, 82nd Congress, Second Session, p. 9.

are disorders of the personality. They are characterized by developmental defects or pathological trends in the personality structure manifest by life-long patterns of action or behavior, rather than by mental or emotional symptoms. Individuals with such a disorder may manifest a disturbance of intrinsic personality patterns or exaggerate personality trends, or they may be ill primarily in terms of society and the prevailing culture. The latter, so-called sociopathic reactions, are frequently symptomatic of a severe underlying neurosis or psychosis and often include those groups of individuals suffering from addiction or sexual deviation.⁵ The law omits any specific provision relating to inadmissibility of homosexuals and sex perverts since "the Public Health Service has advised that the provision for the exclusion of aliens afflicted with psychopathic personality or a mental defect . . . is sufficiently broad to provide for the exclusion of homosexuals and sex perverts."⁶

(d) **Aliens afflicted with epilepsy.** Two general types of epilepsy are commonly recognized. One type is known as essential or idiopathic epilepsy, for which no specific causative factors can be discovered. The other type of epilepsy is considered to be the symptomatic expression of other diseases and causes. True or idiopathic epilepsy is an excludable condition. The Public Health Service finds it not practical in immigration work to sort out the milder cases that might be self-supporting under the proper protected environment; therefore all cases of true epilepsy are inadmissible. Other conditions associated with convulsions are certified according to the underlying causes as a physical defect, unless there is an associated mental defect which warrants exclusion.⁷

(e) **Aliens afflicted with mental defects.** The term "mental defect" has no relationship to mental deficiency which is related to the intellectual status of the individual. The term "mental defect" relates, among others, to hereditary disturbances not covered by any of the other grounds of inadmissibility for mental or physical grounds. The term is utilized in classifying progressive personality disorders which occur in such conditions as infections of the nervous system, for example in behavior disorders of epidemic encephalitis. The term can also be used to cover the more severely disabling neuroses and conduct and habit disorders of adults and children, as well

⁵ Report of the Public Health Service, *supra*.

⁶ Senate Report 1137, 82nd Congress, Second Session, p. 9. See also BIA, *In the Matter of P.*, 7, I. & N. Dec. 258, July 11, 1956 and BIA, *In the Matter of S.*, Interim Decision 1014, July 21, 1959.

⁷ Report of the Public Health Service, *supra*.

as to classify persons who are likely to be brought into repeated conflict with social customs, authority or society in general.⁸

As stated under (c), the terms "psychopathic personality" and "mental defect" are held to be sufficiently broad to bar homosexuals and sex deviates.

(f) **Narcotic drug addicts.** The term "narcotic drug addict" is not defined in the Immigration and Nationality Act. However, in connection with legislation concerning the care and treatment of "narcotic addicts," Congress has furnished the following definition:

"The term 'addict' means any person who habitually uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is, or has been, so far addicted to the use of such habit-forming narcotic drugs as to have lost the power and self-control with reference to his addiction."⁹

This definition which the Board of Immigration Appeals held applicable to the term as used in the deportation provision of Section 241(a)(11) appears equally applicable to Section 212(a)(5). As the Board points out, it is in accord with the judicial decisions which recognize that one may be a user of drugs without being an addict.¹⁰

(g) **Aliens afflicted with tuberculosis in any form.** Tuberculosis is a disease of major concern in connection with immigration, owing to its prevalence throughout the world and to its chronic nature. In immigration work it has been the policy to limit the designation of tuberculosis to active cases. After sufficient evidence is accumulated to warrant the assumption that tuberculosis has become permanently arrested, it is not diagnosed as "tuberculosis" but as "pulmonary fibrosis," a physical defect that might interfere with the ability to earn a living. It has been the policy of the Public Health Service to require that the disease be apparently arrested for at least one year before certifying it as "pulmonary fibrosis."¹¹

(h) **Aliens afflicted with any dangerous contagious disease.** The following diseases are considered to be "dangerous contagious diseases":

⁸ Report of the Public Health Service, *supra*.

⁹ 58 Stat. 683, 42 U.S.C. 201(k), F.C.A. 42 § 201(k).

¹⁰ BIA, *In the Matter of K.C.B.*, 6, I. & N. Dec. 374, November 23, 1954; see also BIA, *In the Matter of B.*, 3, I. & N. Dec. 620, May 27, 1949, and BIA, *In the Matter of W.*, 2, I. & N. Dec. 73, March 25, 1944. See also ch. 45, § 12.

¹¹ Report of the Public Health Service, *supra*.

- | | |
|---|--------------------------------|
| 1. Actinomycosis | 11. Lymphogranuloma venereum |
| 2. Amebiasis | 12. Mycetoma |
| 3. Blastomycosis | 13. Paragonimiasis |
| 4. Chaneroid | 14. <u>Ringworm of scalp</u> |
| 5. Favus | 15. <u>Schistosomiasis</u> |
| 6. Filariasis | 16. Syphilis, infectious stage |
| 7. Gonorrhea | 17. Trachoma |
| 8. Granuloma Inguinale | 18. Trypanosomiasis |
| 9. <u>Keratoconjunctivitis infections</u> | 19. <u>Yaws</u> |
| 10. Leishmaniasis | (42 CFR 34.2(b)) |

§ 3. Aliens whose physical defects may affect their ability to earn a living.—Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if the examining surgeon certifies that they have physical defects, diseases or disabilities which the consular officer or immigration officer determines may affect the aliens' ability to earn a living unless the aliens establish that they will not have to earn a living. (Section 212(a)(7))¹²

An alien who is afflicted with a physical disability other than tuberculosis, leprosy, or a dangerous contagious disease, may be issued a visa and admitted to the United States if a bond or cash deposit has been given, approved by the Attorney General, in order to hold harmless the United States and any state or municipality against the alien becoming a public charge and if the giving of such a bond or cash deposit removes the likelihood that the alien might become a public charge. (Sections 213, 221(g) and 22 CFR 41.91(a)(7) and 42.91(a)(7))

A nonimmigrant found inadmissible under this provision may be admitted upon the exercise of administrative discretion.¹³

§ 4. Paupers, professional beggars and vagrants.—Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if they are paupers,¹⁴ professional beggars or vagrants. (Section 212(a)(8))¹⁵ A nonimmigrant within this class may be admitted upon the exercise of administrative discretion.¹⁶

¹² For text see Appendix A.

¹³ See ch. 34, § 4.

¹⁴ In interpreting the equivalent provision under the Immigration Act of 1917 the Board of Immigration Appeals held that "for the purpose of the immigration laws, a pauper is one who is actually dependent upon public funds for support and who, in addition, is unable to work by reason of mental or physical infirmity, or who is unwilling to work." (*Matter of M.*, 2, I. & N. Dec. 131, June 26, 1944)

¹⁵ For text see Appendix A.

¹⁶ See ch. 34, § 4.

§ 5. Aliens convicted of, or admitting the commission of a crime involving moral turpitude.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and are excludable from admission into the United States if they:

- (1) have been convicted of a crime involving moral turpitude (other than a purely political offense);
- (2) admit having committed such a crime;
- (3) admit committing acts which constitute the essential elements of such a crime.

However, aliens who have committed only one crime involving moral turpitude while under the age of eighteen years may be granted a visa and admitted into the United States if the crime was committed more than five years before the date of the application for a visa and for admission into the United States unless the crime resulted in confinement in a prison or correctional institution. In the latter case the alien, in order to benefit from the exception, must have been released from confinement more than five years before the date of application for a visa and for admission to the United States. (Section 212(a)(9)) A further exception applies under the terms of the Act of September 3, 1954¹⁷ which provides:

"Any alien who is excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of Title 18, United States Code, by reason of the punishment actually imposed, or who is excludable as one who admits the commission of such misdemeanor, may hereafter be granted a visa and admitted to the United States, if otherwise admissible: *Provided*, That the alien has committed only one such offense."

The admission of aliens inadmissible under this provision may be authorized by the exercise of administrative discretion if they are nonimmigrants, or immigrants who are close relatives of American citizens or permanent resident aliens.¹⁸

(b) **Crime involving moral turpitude.** Any crime involving an act intrinsically and morally wrong, or an act done contrary to justice, honesty, principle, or good morals, is a crime involving moral turpitude (*malum in se*). It is to be distinguished from an act which is not inherently immoral, but becomes an offense only because its commission is expressly forbidden by law (*malum prohibitum*). The violation of statutes which merely license or regulate and impose criminal liability without regard to evil intent does not involve moral turpitude.¹⁹

¹⁷ Section 4 of Public Law 770, 83rd Congress, 68 Stat. 1145; see also (i), *infra*.

¹⁸ See ch. 34, §§ 3, 4.

¹⁹ *Coykendall v. Skarmetta*, 22 Fed. (2d) 120 (C.C.A. 5, 1927); *BIA, In the Matter of G.*, 7, I. & N. Dec. 118, February 9, 1956.

Whether a crime, committed in the United States or abroad, involves moral turpitude under the immigration laws is determined by standards prevailing in the United States.²⁰

The courts have set certain standards which must be followed in determining whether a crime involves moral turpitude.²¹ First a determination has to be made what law or specific portion of a law has been violated, and then without regard to the act committed by the alien, whether that law inherently involves moral turpitude.²² The latter determination must include a finding whether the violation of law "under any and all circumstances" involves moral turpitude.²³ If it is found that the violation of the law under any and all circumstances involves moral turpitude then all convictions under that law involve moral turpitude. If, however, it is found that the particular statute punishes acts which do not involve moral turpitude, as well as those which do, then no conviction under that law involves moral turpitude, although in the particular instance the conduct was immoral.²⁴

If under a given statute serious and nonserious crimes, i.e., those involving moral turpitude and those not involving it, cannot be separated or distinguished, the statute must be taken at its minimum. If, on the other hand, the provisions of the statute are divisible or separable and so drawn as to include within its definition crimes which do and some which do not involve moral turpitude, the record of conviction may be examined to determine which provision of the statute is involved.²⁵

The record of conviction includes the charge (complaint information or indictment), plea, verdict, and sentence. It does not include testimony or evidence as to the nature of the par-

²⁰ 39 Op. Atty. Gen. 95 and 96, 1937; see also 22 CFR 41.91(a)(9)(i) and 42.91(a)(9)(i).

²¹ BIA, *In the Matter of R.*, 6, I. & N. Dec. 444, 447, December 14, 1954.

²² *United States ex rel. Mylius v. Uhl*, 203 Fed. 152 (S.D. N.Y., 1913), *affd.* 210 Fed. 860 (C.C.A. 2, 1914).

A problem arises when a foreign statute labels a certain offense with a term which connotes a different meaning under American law. "Theft or stealing" under Canadian statute includes offenses which would not be so characterized in American law. Thus, a person may be convicted of theft in Canada when the real offense is not known by that name in American law and does not involve moral turpitude. Under these circumstances, it is permissible to go beyond the foreign statute and to consider such facts as may appear from the record of conviction or the admissions of the alien, in order to determine by independent judgment whether, under American law, the offense is one which involves moral turpitude. (Ruling by the Attorney General, *In the Matter of T.*, 2, I. & N. Dec. 22, 42, February 24, 1944)

²³ *United States ex rel. Manzella v. Zimmerman*, 71 F. Supp. 534 (E.D.Pa., 1947).

²⁴ *United States ex rel. Robinson v. Day*, 51 Fed. (2d) 1022 (C.C.A. 2, 1931).

²⁵ *United States ex rel. Zaffarano v. Corsi*, 63 Fed. (2d) 757 (C.C.A. 2, 1933); BIA, *In the Matter of K.*, 4, I. & N. Dec. 490, September 27, 1951; see also BIA, *In the Matter of C.*, 5, I. & N. Dec. 65, October 12, 1953; BIA, *In the Matter of S.*, 5, I. & N. Dec. 101, December 23, 1953 and BIA, *In the Matter of N.*, Interim Decision 1030, November 9, 1959.

ticular act.²⁶ To determine what law has been violated, the indictment, conviction and sentence may be examined.²⁷

Standards for the interpretation of the term "crime involving moral turpitude" have been supplied by the courts to eliminate the burden on administrative agencies of going into the evidence of a case; to prevent a nonjudicial agency from retrying a judicial matter; to preclude the situation in which two people convicted under the same specific law are given different treatment because one indictment may contain a fuller or different description of the same act than the other indictment; and to achieve uniform administration of law.²⁸

A large body of court and administrative decisions on the interpretation of the term "crime involving moral turpitude" has been developed in exclusion and deportation proceedings both under immigration laws in effect prior to the Immigration and Nationality Act and since its enactment in 1952. The courts and the Board of Immigration Appeals have held that the following crimes, among others, involve moral turpitude:

abortion	forgery
assault with intent to rob	fraud
bigamy	larceny or theft
blackmail	manslaughter
bribery	petty larceny
common-law rape	receiving or concealing stolen goods
conspiracy to violate internal revenue laws with intent to defraud United States	robbery
contributing to the delinquency of a female child	sodomy
embezzlement	statutory rape
evasion of military service in violation of Selective Training and Service Act	use of the mails in scheme to defraud
	uttering a forgery. ²⁹

The deportation provisions of the law also refer to crimes involving moral turpitude.³⁰ The interpretations under the deportation provisions of the law apply equally to the term as used in the law relating to inadmissible aliens.

(c) **Admission of commission of crime or acts constituting essential elements of crime.** Before a finding of ineligibility

²⁶ BIA, *In the Matter of C.*, 5, I. & N. Dec. 65, 71, October 12, 1953.

²⁷ *United States ex rel. Teper v. Miller*, 87 F. Supp. 285 (S.D. N.Y., 1949).

²⁸ *United States ex rel. Mylius v. Uhl*, *supra*; BIA, *In the Matter of R.*, 6, I. & N. Dec. 444, 448, Footnote 2, December 14, 1954.

²⁹ See 8 U.S.C. 1182, note 4, and 1251, note 10; F.C.A. 8 § 1182, note 4, and § 1251, note 10. See also, *Administrative Decisions under Immigration and Nationality Laws of the United States*.

³⁰ See ch. 45, § 7.

may be made based on an alien's admission of having committed a crime involving moral turpitude or on his admission of committing acts which constitute the essential elements of such a crime, it must first be established that a crime has been committed under the criminal law of the jurisdiction where the act occurred. (22 CFR 41.91(a)(9)(i) and 42.91(a)(9)(i)) In other words, if an alien admitted the commission of acts in Italy which constitute the essential elements of a crime in the United States but not in Italy, a finding of ineligibility could not be based on Section 212(a)(9).

The part of Section 212(a)(9) which, in the absence of a conviction for a crime involving moral turpitude, renders an alien ineligible because of his admission of the commission of such crime refers to:

- (1) "aliens who admit having committed such a crime," and
- (2) "aliens who admit committing acts which constitute the essential elements of such a crime."

While the language contained under (1) is in substance identical with the language of prior law, the language "aliens who admit committing acts which constitute the essential elements of such a crime" was first introduced by the Immigration and Nationality Act. House and Senate reports explaining the new terminology offered the following comment:

"Under this change immigration officers charged with administering the law will be able to determine from the information supplied by the alien whether he falls within the 'criminal' category of excludables, notwithstanding the fact that there may be no record of conviction or admission of the commission of a specific offense."³¹

In deciding whether a valid admission of a crime has been made the Board of Immigration Appeals established the following rules under the law in effect before the Immigration and Nationality Act:

- (1) It must be clear that the conduct in question constitutes a crime or misdemeanor under the law where it is alleged to have occurred.
- (2) An adequate definition of the crime, including all essential elements, must first be given to the alien. This must conform to the law of the jurisdiction where the offense is alleged to have been committed, and it must be explained in understandable terms.
- (3) The alien must clearly admit conduct constituting the essential elements of the crime or misdemeanor and that he committed such offense. By the latter is meant that he must admit the legal conclusion that he is guilty of the crime or misdemeanor.

³¹ House Report No. 1365, 82nd Congress, Second Session, p. 48, and Senate Report No. 1137, 82nd Congress, Second Session, p. 9; see also Senate Report No. 1515, 81st Congress, Second Session, p. 353.

(4) It must appear that the crime or misdemeanor admitted actually involves moral turpitude, although it is not required that the alien himself concede the element of moral turpitude.

(5) The admission must be free and voluntary.³² These rules represent a gradual evolution of the rule laid down by the courts in connection with the equivalent provisions of earlier law.³³

After the enactment of the Immigration and Nationality Act the question arose as to the significance of the new language added to the statute, in the light of the Congressional history as reflected in the House and Senate reports. In a decision approved by the Attorney General, the Board of Immigration Appeals held that the only change which has been made through the addition of the new language ("... admitted acts constituting the essential elements of a crime involving moral turpitude . . .") is that the alien is not required to admit the legal conclusion that he committed the specific crime but that, in all other respects, the rules and precedents which have governed admissions of crimes under prior law are still in effect; in other words, the alien must have admitted all the elements of the crime involved and must have been furnished with a definition of the crime in understandable terms.³⁴

(d) **Conviction in absentia.** A conviction *in absentia* of a crime involving moral turpitude does not constitute a conviction within the meaning of Section 212(a)(9). (22 CFR 41.91(a)(9)(v) and 42.91(a)(9)(vi))³⁵

(e) **Purely political offense.** The term "purely political offense" includes offenses which resulted in convictions obviously based on trumped-up charges or predicated on repressive measures against racial, religious, or political minorities. (22 CFR 41.91(a)(9)(vii) and 42.91(a)(9)(viii)) However, the mere fact that an alien is or was a member of a racial, religious, or political minority is not considered as sufficient in itself to warrant a conclusion that the crime of which he was convicted

³² *In the Matter of J.*, 2, I. & N. Dec. 285, 288, March 1, 1945.

³³ In the leading decision the court stated: "We are of the opinion that Congress, by the enactment of this provision, has required the alien's own admission of guilt as proof of the commission of this class of crimes, and has deprived the immigration authorities of the right to try the question of guilt; that the statute contemplates a voluntary admission; and that evidence of facts stated by the alien from which an inference of his guilt might be inferred is not competent." (*Howes v. Tazer*, 3 Fed. (2d) 849 (C.C.A. 1, 1925); see also *U.S. ex rel. Castro v. Williams*, 203 Fed. 155 (S.D. N.Y., 1913) and *U.S. ex rel. Jelic v. District Director*, 106 Fed. (2d) 14 (C.C.A. 2, 1939))

³⁴ *BIA, In the Matter of G.M.*, 7, I. & N. Dec. 40, December 19, 1955, decided by Attorney General, April 2, 1956; see also *BIA, In the Matter of K.*, 7, I. & N. Dec. 594, October 31, 1957.

³⁵ An alien who was not present when his case was called and when he was convicted, was not convicted *in absentia* if he had notice of the proceedings, appeared in court after their conclusion, took no appeal and paid the fine. (*BIA, In the Matter of V.D.B.*, Interim Decision 1061, March 11, 1960)

was a purely political offense. In the following cases the Department of State ruled that offenses were "purely political offenses":

(1) An alien who was convicted by a South African court of robbery and assault because he helped overpower his guards and forcefully took possession of a government car in attempting to escape from a civilian internment camp.

(2) An alien convicted by a Netherlands court of having executed false ration coupons in order to benefit the underground during World War II.

(3) An alien who was a member of the German SS and was sentenced by a Soviet court to nine years for theft of some paper bags.

(4) An alien who was convicted by a Special Criminal Court in Ireland in 1941 of assault and armed robbery as a result of his participation in an armed raid as a member of the Irish Republican Army.

(5) An alien brought into Germany as a slave laborer, convicted by a special German court of larceny of a food parcel from a railway car and sentenced to eighteen months imprisonment under "regulations against people dangerous to social service."

(6) An alien convicted in Italy of participating in a riot protesting lack of flour distribution where the court held that the acts were not done for personal reasons or for individual gain.

(7) An alien convicted by a Danish court of forging a receipt for a Danish passport and forging an official request for air transportation solely for the purpose of escaping from an Iron Curtain country.

(8) An alien convicted of attempted blackmail by an East German court, fled East Germany. A West German court refused to execute the judgment on the ground that there appeared to be no legal basis for the conviction.

(9) An alien convicted by a Yugoslav court of violating a law on crime against People and State in that he allegedly spread propaganda against the government.³⁶

The Attorney General held that the violation of a provision of the German criminal code which would normally be held to involve moral turpitude did not involve moral turpitude because the violation was committed by a Jew as part of his resistance against the economic measures taken against Jews in Germany.³⁷

(f) Full and unconditional pardon. An alien convicted of a crime involving moral turpitude is not ineligible to receive a visa under Section 212(a) (9) if he was granted a full and unconditional pardon by the President of the United States or by the Governor of a State of the United States.³⁸ A legislative

³⁶ Visa Office Bulletin No. 30 of May 28, 1958.

³⁷ 39 Op. Atty. Gen. 215, 1938.

³⁸ The same applies if the pardon was granted by the former High Commissioner for Germany under the authority of Executive Order 10062 or by the United States Ambassador to the Federal Republic of Germany under the authority of Executive Order 10608, inasmuch as these officials acted in Germany for the President of the United States.

pardon granted in the United States or any pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state does not remove a ground of ineligibility under Section 212(a)(9).³⁹ (22 CFR 41.91(a)(9)(vi) and 42.91(a)(9)(vii))

(g) **One crime under age of eighteen years.** The exception from inadmissibility stated under (a) in the case of an alien who has committed only one crime involving moral turpitude while under the age of eighteen years does not apply if the alien has committed an additional crime involving moral turpitude while under eighteen years of age irrespective of whether the commission of the second crime is evidenced by the alien's conviction or his admission. (22 CFR 41.91(a)(9)(ii) and 42.91(a)(9)(ii))⁴⁰

(h) **Juvenile delinquencies not crimes.** Prior to the enactment of the Immigration and Nationality Act, it was a well-established administrative holding that juvenile delinquencies are not considered to be crimes within the meaning of the immigration laws.⁴¹ The Board of Immigration Appeals and the Department of State hold that the Immigration and Nationality Act has made no change in this determination. Consequently, aliens who have been found to be juveniles and have been treated as juvenile offenders in the disposition of their cases are not considered as having been "convicted of a crime involving moral turpitude." However, a juvenile convicted as a criminal rather than as a juvenile offender of a crime involving moral turpitude is subject to the provisions of Section 212(a)(9). (22 CFR 41.91(a)(9)(iv) and 42.91(a)(9)(v))

(i) **Relief under Act of September 3, 1954.** The Act of September 3, 1954, as stated above under (a), makes Section 212(a)(9) inapplicable to any alien who is excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of Section 1(3) of Title 18, United

³⁹ Judicial pronouncements in this country clearly limit pardons and other acts in the nature of a pardon exclusively to domestic convictions. Therefore, an alien granted an amnesty under Italian law relating to his conviction of adultery in 1946 is inadmissible to the United States under § 212(a)(9). (BIA, *In the Matter of B.*, 7, I. & N. Dec. 166, April 17, 1956; see also BIA, *In the Matter of G.*, 5, I. & N. Dec. 129, February 17, 1953)

An alien is not inadmissible to the United States when he admits committing acts which constitute the essential elements of a crime involving moral turpitude if admission relates to the same crime for which he was previously convicted and for which he obtained a pardon in the United States. (BIA, *In the Matter of E. V.*, 5, I. & N. Dec. 194, April 6, 1953)

⁴⁰ See also BIA, *In the Matter of A.*, 5, I. & N. Dec. 639, January 22, 1954.

⁴¹ BIA, *In the Matter of F.*, 2, I. & N. Dec. 517, April 5, 1956.

States Code,⁴² by reason of the punishment actually imposed or who is excludable as one who admits the commission of such misdemeanor, if the alien has committed only one such offense.

This provision requires, in the case of convictions, the meeting of two standards, namely, the offense must be an offense which, if committed in the United States, would be a misdemeanor, punishable by imprisonment for a term not exceeding one year, and the offense must be one for which the actual penalty imposed in the particular case was imprisonment not to exceed six months or a fine not to exceed \$500, or both. If these two tests are met the offense does not result in the alien's inadmissibility if there was only one offense and the alien is not otherwise inadmissible.⁴³

In determining whether an offense under foreign law would, if committed in the United States, be classifiable as a felony or misdemeanor, the standard to be used is the United States Code, and the Criminal Code of the District of Columbia whenever the United States Code fails to define a crime comparable to the one committed under the criminal laws of a foreign country. A finding that a felony has been committed necessarily eliminates any further question as to the applicability of Section 4 of the Act of September 3, 1954, to a particular case. A sentence which has been suspended by the court at the time of imposing sentence is not regarded as having been "actually imposed" within the meaning of Section 4.⁴⁴

In order to determine whether the Act of September 3, 1954, offers relief in the case of an alien who has admitted the commission of an offense for which he has not been convicted, the only determination to be made is whether a misdemeanor as previously defined has been committed. The possible punishment which might have been inflicted had a conviction occurred is irrelevant for this determination.⁴⁵

⁴² 18 U.S.C. 1, F.C.A. 18 § 1 provides:

"Notwithstanding any act of Congress to the contrary:

"(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

"(2) Any other offense is a misdemeanor.

"(3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both, is a petty offense. (June 25, 1948, ch. 645, 62 Stat. 684.)"

⁴³ See letter dated August 20, 1954 from Representative Francis E. Walter to Senator Pat McCarran. (Congressional Records of August 20, 1954, pp. 14609 to 14610, and of August 24, 1954, p. A 6365; see also Congressional Record of August 20, 1954, p. 14506)

⁴⁴ Punishment has not been "actually imposed" if court on date of imposing sentence granted a "pardon" of a one-year prison term and fine. (BIA, *In the Matter of T.*, Interim Decision 997, September 21, 1956)

⁴⁵ When no conviction is involved, an admission of a crime under a statute which permits punishment of the offense either as a misdemeanor or a felony will be treated

§ 6. Aliens convicted of two or more offenses.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if they have been convicted of two or more offenses, other than purely political offenses, for which the aggregate sentences to confinement actually imposed were five years or more, regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude. (Section 212(a)(10))⁴⁶

This provision, first enacted in the Immigration and Nationality Act, is to be clearly differentiated from the one contained in Section 212(a)(9) and described above in Section 5. It does not require that the offenses at issue involve moral turpitude. The deciding factor is whether the aggregate sentence to confinement actually imposed was five years or more. On the other hand, different from Section 212(a)(9), the admission of the commission of two or more offenses, in the absence of a conviction, does not bring Section 212(a)(10) into operation.

The admission of aliens inadmissible under this provision may be authorized by the exercise of administrative discretion if they are nonimmigrants, or immigrants who are close relatives of American citizens or permanent resident aliens.⁴⁷

(b) **Conviction in absentia.** A conviction or convictions *in absentia* of two or more offenses do not constitute a conviction within the meaning of Section 212(a)(10). (22 CFR 41.91(a)(10)(ii) and 42.91(a)(10)(iii))⁴⁸

as an admission of a misdemeanor. Hence, the benefits of § 4 of P.L. 770 may be accorded on alien in that situation. (BIA, *In the Matter of E. N.*, 7, I. & N. Dec. 153, March 23, 1956)

The relief afforded by § 4 of the Act of September 3, 1954, which applies to aliens who have committed a single offense, is not available where alien has committed two offenses despite expungement of record of conviction for first offense under § 1203.4, California Penal Code. Expungement of the record of conviction does not completely obliterate the fact that the unlawful acts occurred. The test in applying the statute is not whether the alien has been convicted of, or admits having committed, more than one offense, but whether there is a preponderance of evidence which establishes that he has in fact committed more than one offense involving moral turpitude. (BIA, *In the Matter of S.R.*, 7, I. & N. Dec. 495, June 20, 1957)

The benefits of § 4 of the Act of September 3, 1954, are applicable to all aliens whether applying for admission for the first time or whether already residing in the United States, and on alien who is within the purview of that act is to be relieved of all disabilities flowing from his conviction. (BIA, *In the Matter of M.*, 7, I. & N. Dec. 147, March 16, 1956); see also ch. 45, § 2(d)(5).

⁴⁶ For text see Appendix A.

⁴⁷ See ch. 34, §§ 3, 4.

⁴⁸ An alien who was not present when his case was called on and when he was convicted was not convicted *in absentia* if he had notice of the proceedings, appeared in

(c) Purely political offense. The Conference Report on the Immigration and Nationality Act contains the following statement on this provision of the statute:

"Regarding the sections of the bill which provide for the exclusion of aliens convicted of two or more offenses, other than purely political offenses, it is the opinion of the conferees that those convictions which were obviously based on trumped-up charges or predicated upon repressive measures against racial, religious, or political minorities, should be regarded as purely political in nature and should not result in the exclusion of the alien."⁴⁹

This legislative history is the basis for the regulatory provision that "the term 'purely political offense,' as used in Section 212(a) (10) of the Act shall include offenses which resulted in convictions obviously based on trumped-up charges or predicated upon repressive measures against racial, religious or political minorities." (22 CFR 41.91(a) (10) (iv) and 42.91(a) (10) (v))

The rulings by the Department of State concerning the meaning of the term "purely political offenses" described above under Section 5(e) apply here.

(d) Full and unconditional pardon. An alien is not considered ineligible to receive a visa under Section 212(a) (10) if he was granted a full and unconditional pardon by the President of the United States or by the Governor of a State of the United States.⁵⁰

A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state does not remove a ground of ineligibility under Section 212(a) (10). (22 CFR 41.91(a) (10) (iii) and 42.91(a) (10) (iv))

(e) Juvenile delinquencies not offenses. An alien is not considered ineligible to receive a visa under Section 212(a) (10) by reason of having been tried and treated as a juvenile by a juvenile court for the commission of two or more offenses regardless of the period of confinement imposed by the sentence since such proceedings are not regarded as criminal in nature.⁵¹ However, a juvenile convicted as an adult is subject to the provisions of Section 212(a) (10) regardless of whether juvenile

court after their conclusion, took no appeal and paid the fine. (BIA, *In the Matter of V.D.B.*, Interim Decision 1061, March 11, 1960)

⁴⁹ House Report No. 2096, 82nd Congress, Second Session, p. 127.

⁵⁰ The same applies if the pardon was granted by the former High Commissioner for Germany under the authority of Executive Order 10062 or by the United States Ambassador to the Federal Republic of Germany under the authority of Executive Order 10608, inasmuch as these officials acted in Germany for the President of the United States.

⁵¹ For the background of this interpretation see § 5(h), *supra*.

courts existed within the jurisdiction at the time of the conviction. (22 CFR 41.91(a)(10)(i) and 42.91(a)(10)(ii))

(f) **Sentences to confinement actually imposed.** A sentence to confinement which has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" as the term is used in Section 212(a)(10). (22 CFR 41.91(a)(10)(v) and 42.91(a)(10)(vi))

§7. Promoters of illegal entrants.—Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if they at any time have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law. (Section 212(a)(31))⁵²

Anticipation of profit, no matter how small, constitutes "gain" within the meaning of the statute.⁵³

A nonimmigrant found inadmissible under this provision may be admitted upon the exercise of administrative discretion.⁵⁴

§8. Polygamists.—Immigrants are ineligible to receive visas and excludable from admission into the United States if they are polygamists or practice polygamy or advocate the practice of polygamy. (Section 212(a)(11))⁵⁵

Immigrants who are members of religious organizations which tolerate polygamy are not inadmissible, unless they are themselves polygamists, or practice or advocate the practice of polygamy. (22 CFR 42.91(a)(11))

⁵² For text see Appendix A.

⁵³ BIA, *In the Matter of P.G.*, 7, I. & N. Dec. 514, July 3, 1957. This ruling, although rendered in connection with the deportation provision of § 241(a)(13), applies here inasmuch as the pertinent language is identical. See ch. 45, § 14; see also Attorney General, *In the Matter of R.D.*, 2, I. & N. Dec. 758, July 14, 1947.

⁵⁴ See ch. 34, § 4.

⁵⁵ For text see Appendix A.

Polygamy is the state of having a plurality of wives or husbands at the same time; see Webster's New International Dictionary of the English Language, unbridged, Second Edition, 1954. In ruling on the predecessor provision to § 212(a)(11) in § 3 of the Immigration Act of 1917, the Board of Immigration Appeals observed that, according to its legislative history, the words "polygamists" and "polygamy" refer to the historical customs and religious practice which the Mormons have typified in this country until the statutory abolition of polygamy in the latter part of the 19th century. Therefore, the Board held that an alien may be considered inadmissible as a polygamist only if it is shown that he subscribes to the historical customs or religious practice called "polygamy." It is not sufficient that the alien should in fact have had more than one spouse at a given time by virtue of a second marriage undertaken without benefit of divorce. The Board further observed that in immigration law the terms "bigamy" and "polygamy" are neither synonymous nor interchangeable. (BIA, *In the Matter of G.*, 6, I. & N. Dec. 9, April 9, 1953)

Aliens are inadmissible under this provision only if they are immigrants. Nonimmigrants are exempted from its application. (Section 212(d)(1))

§ 9. Prostitutes and procurers.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if they

- (1) are prostitutes; or
- (2) have engaged in prostitution; or
- (3) are coming to the United States solely, principally, or incidentally, to engage in prostitution; or
- (4) directly or indirectly procure or attempt to procure or have procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution or for any other immoral purpose;⁵⁶ or
- (5) are or have been supported by, or receive or have received, in whole or in part, the proceeds of prostitution;⁵⁷ or
- (6) are coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution. (Section 212(a)(12))⁵⁸

The admission of aliens inadmissible under this provision may be authorized by the exercise of administrative discretion if they are nonimmigrants or immigrants who are close relatives of American citizens or permanent resident aliens.⁵⁹

The provision placing prostitutes in a class of inadmissible aliens dates back to the earliest Federal exclusion statute.⁶⁰ The Immigration and Nationality Act broadened the previous statute by proscribing persons who "have engaged in prostitution," irrespective of whether they are still so engaged. Consequently, the fact that an alien may have ceased to engage in

⁵⁶ An alien who engages in extra-marital relations with a willing woman over a ten-day period is not deportable as one who has procured or attempted to procure a person for the purpose of prostitution or for any other immoral purpose. The words "other immoral purpose" in § 212(a)(12) refer to acts of a like character with prostitution and do not encompass simple fornication. (BIA, *In the Matter of R.*, 6, I. & N. Dec. 444, December 14, 1954)

⁵⁷ Inadmissibility under § 212(a)(12) is not established where applicant was paid by the owners of various houses of prostitution in Mexico for her services therein as a nurse, and there is evidence that the employment was in furtherance of health regulations and was not in furtherance of prostitution. (BIA, *In the Matter of C.*, 7, I. & N. Dec. 432, March 14, 1957)

⁵⁸ For text see Appendix A.

⁵⁹ See ch. 34, §§ 3, 4.

⁶⁰ 18 Stat. 477; see also ch. 1, § 3.

prostitution does not remove the existing ground of inadmissibility. (22 CFR 41.91(a)(12)(ii) and 42.91(a)(12)(ii)) Under previous law former prostitutes and former procurers who had reformed were not inadmissible to the United States.

(b) **"Prostitute."** The term "prostitute" means a woman given to promiscuous sexual intercourse for hire. (22 CFR 41.91(a)(12)(i) and 42.91(a)(12)(i))⁶¹

(c) **"Engaged in prostitution."** A finding that an alien has "engaged in prostitution" must be based on elements of continuity and regularity which would indicate a pattern of behaviour or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts. (22 CFR 41.91(a)(12)(i) and 42.91(a)(12)(i))⁶²

(d) **Relationship to Section 212(a)(9).** A prostitute or a person who has engaged in prostitution is inadmissible notwithstanding the fact that prostitution may not be prohibited under the laws of the foreign country where the act occurred. (22 CFR 41.91(a)(12)(iii) and 42.91(a)(12)(iii)) Section 212(a)(12) proscribes prostitution, not the conviction of prostitution.⁶³ In other words, ineligibility under Section 212(a)(12) is independent from a finding of ineligibility under Section 212(a)(9) although in a given case both provisions may apply to the same set of facts. On the other hand, a person convicted for an offense referred to as prostitution under a foreign statute may be ineligible under Section 212(a)(9) without being ineligible under Section 212(a)(12) because the standards set in the latter provision have not all been met.

§ 10. Aliens coming for immoral sexual acts.—Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if they are "coming to the United States to engage in any immoral sexual act." (Section 212(a)(13))⁶⁴

The admission of a nonimmigrant inadmissible under this provision may be authorized upon the exercise of administrative discretion.⁶⁵

⁶¹ An alien who committed prostitution under duress is not inadmissible under § 212(a)(12). (BIA, *In the Matter of M.*, 7, I. & N. Dec. 251, July 5, 1956)

⁶² Evidence of an alien's conviction of a single act of prostitution is insufficient to sustain a charge that she had engaged in prostitution after entry since the term "engaged in prostitution" means conduct that is carried on over a period of time although it need not be carried on as a business or as a means of livelihood. (BIA, *In the Matter of T.*, 6, I. & N. Dec. 474, January 27, 1955)

⁶³ BIA, *In the Matter of G.*, 5, I. & N. Dec. 559, December 9, 1953.

⁶⁴ For text see Appendix A.

⁶⁵ See ch. 34, § 4.

The Board of Immigration Appeals has held that an alien is inadmissible under this provision only if his primary purpose in coming to the United States is to engage in immoral sexual acts.⁶⁶ The Board reached this decision in the case of an alien who, prior to her application for admission in 1953, cohabited with the father of her five children since 1942 and whose relationship had not been legitimated because of the continuance of the man's earlier marriage. The Board found this alien not "coming to the United States to engage in immoral sexual acts," but coming primarily in order that there may be a continuation of the family unit as it existed for many years in the past. The Board recognized that its holding was in conflict with the House and Senate Committee reports on the bill which eventually became the Immigration and Nationality Act. These reports, in almost identical language, state that the new provision "is designed to express clearly that if the alien intends to perform an illicit sexual act after entry, regardless of the other reasons motivating his entry, he is to be excluded."⁶⁷ Taking issue with these statements the Board held that they are "clearly . . . at variance with the language finally adopted in the act," but consistent with the language in an earlier version of the bill which would have made aliens inadmissible if coming "*solely, principally or incidentally* to engage in any immoral sexual act."

The views of the Board are reflected in visa regulations which provide that an alien shall not be ineligible to receive a visa under Section 212(a)(13) unless his primary purpose in coming to the United States is to engage in an immoral sexual act. (22 CFR 41.91(a)(13) and 42.91(a)(13))

§ 11. Certain immigrants coming to perform skilled or unskilled labor.

(a) **Definition.** Certain immigrants are ineligible to receive visas and are excludable from admission into the United States if they seek to enter the United States for the purpose of performing skilled or unskilled labor and if the Secretary of Labor has certified to the Secretary of State and the Attorney General that:

- (1) sufficient workers in the United States who are able, willing, and qualified are available at the time of the aliens' applications for visas and for admission into the United

⁶⁶ BIA, *In the Matter of B.*, 5, I. & N. Dec. 185, April 3, 1953, based on *Hansen v. Haff* (1934) 291 U. S. 559, 78 L. ed. 968, 54 Sup. Ct. 494.

⁶⁷ House Report No. 1365, 82nd Congress, Second Session, p. 50 and Senate Report No. 1137, 82nd Congress, Second Session, p. 10.

States and at the place to which the aliens are destined to perform such skilled or unskilled labor, or that

(2) the employment of such aliens will adversely affect the wages and working conditions of the workers in the United States similarly employed.

This provision applies only to nonpreference quota immigrants and to nonquota immigrants entitled to this status as natives of a nonquota country of the Western Hemisphere or as former American citizens who are not:

(i) parents, spouses, sons and daughters regardless of age or marital status, of American citizens;

(ii) parents, spouses, and children of aliens lawfully admitted to the United States for permanent residence;

(iii) brothers and sisters of American citizens;

(iv) immigrants whose services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants, and to be substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States.

Preference quota immigrants and immigrants classifiable as nonquota immigrants as returning resident aliens, ministers of religion, or as employees or former employees of the United States Government abroad are not affected by this provision. Certain skilled aliens affected by this provision may secure a waiver as described under (d), below. (Section 212(a)(14)⁶⁸ and 22 CFR 42.91(a)(14))⁶⁹

(b) **Previous law.** The provision of Section 212(a)(14), first enacted in the Immigration and Nationality Act, took the place of the so-called contract labor provisions which were in effect since 1885.⁷⁰ Under the contract labor provisions of the Immigration Act of 1917 aliens, with few exceptions, were excluded from admission into the United States if they were promised or had a contract for labor in the United States which was predominantly manual in character.

(c) **Significance.** Different from previous law, Section 212(a)(14) becomes operative only upon a formal certification by the Secretary of Labor. Thus, the Secretary of Labor is re-

⁶⁸ For text see Appendix A.

⁶⁹ Nonimmigrants are not affected by this provision. Nonimmigrants who wish to enter the United States to perform skilled or unskilled labor must qualify as temporary workers. See ch. 26.

⁷⁰ See ch. 1, § 4.

sponsible for a determination as to whether the immigration of certain aliens or certain groups of aliens may adversely affect labor conditions or living standards in the United States.

The existence or the cancellation of a certification by the Secretary of Labor will be recognized by consular officers only on the basis of an official notification from the Department of State. Once the Secretary of Labor has made the certification with respect to a particular occupation, an immigrant who is seeking to enter the United States for the purpose of engaging in such occupation is ineligible to receive a visa even if he has no offer, promise, contract of employment, or any other form of prearranged employment in this occupation, unless he falls within one of the exempt categories described above. (22 CFR 42.91(a) (14))

Since the enactment of the Immigration and Nationality Act in 1952, the Secretary of Labor has made only occasional and sparing use of this provision, such as in the case of aliens seeking to join strike-bound employers.

(d) **Waiver of inadmissibility.** An alien affected by a certification of the Secretary of Labor may be issued a visa and admitted into the United States if the Attorney General determines that his services are needed urgently in the United States because of his high education, technical training, specialized experience, or exceptional ability, and that these services will be substantially beneficial prospectively to the national economy, cultural interest, or welfare of the United States. (Section 212 (a) (14))

The person, institution, firm, organization, or governmental agency for whom the inadmissible alien will perform skilled or unskilled labor and who seeks the exception, is required to apply for a waiver to the Immigration and Naturalization Service. The application must contain information under oath or affirmation and must be supported by documentary evidence attesting to the alien's education, training, experience, and ability. In addition, there must be submitted a statement containing a complete description of the services to be performed, and information regarding the efforts made to secure persons in the United States to perform such services, and in what manner the alien's services will be substantially beneficial to the national economy, cultural interest, or welfare of the United States. (8 CFR 212a.1)

§ 12. Aliens likely to become public charges.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and are excludable from admission into the United States who

"in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges." (Section 212(a)(15))⁷¹

A conclusion that an alien is ineligible to receive a visa under the provisions of Section 212(a)(15) must be predicated upon circumstances which indicate that the alien will probably become a charge upon the public after entry into the United States. (22 CFR 41.91(a)(15)(i) and 42.91(a)(15)(i))

A bond or cash deposit may be given in the case of an alien who is likely to become a public charge. If such a bond or cash deposit is considered sufficient to hold harmless the United States and any state or municipality against the alien's becoming a public charge, he may be issued a visa and admitted into the United States. (Section 213, 221(g); 22 CFR 41.91(a)(15)(ii) and 42.91(a)(15)(ii))

The admission of a nonimmigrant inadmissible under this provision may be authorized upon the exercise of administrative discretion.⁷²

Neither law nor regulations specify the evidence an alien has to present in order to show that he is not likely to become a public charge in the United States. The evidence usually required by consular officers varies in the cases of immigrants and nonimmigrants.

(b) Public charge evidence in the case of nonimmigrants. In the case of a nonimmigrant the evidence that the alien is not likely to become a public charge varies depending on the classification of the nonimmigrant. In the case of a visitor for pleasure, for example, an invitation from a relative or friend who is well established in his community may be satisfactory in conjunction with a return ticket presented by the visa applicant. In the case of other nonimmigrants the evidence that they are not likely to become public charges frequently is part of the evidence submitted to establish the alien's particular classification, such as in the case of a visitor for business,⁷³ a student,⁷⁴ a representative of a foreign information medium,⁷⁵ or

⁷¹ For text see Appendix A. For origin of this provision, see ch. 1, § 3; for its historical development see Senate Report No. 1515, 81st Congress, Second Session, p. 346.

⁷² See ch. 34, § 4.

⁷³ See ch. 21.

⁷⁴ See ch. 22.

⁷⁵ See ch. 25.

a treaty trader.⁷⁶ Generally speaking, the public charge evidence required of nonimmigrants is not as detailed as that of immigrants.

(c) **Public charge evidence in the case of immigrants.** An immigrant, as a rule, is required to show that he is not likely to become a public charge by one or more of the following means:

(1) that he has, or will have, in the United States funds of his own sufficient to provide for his support;

(2) that he has employment of a permanent nature awaiting him in the United States which will provide an adequate income, unless the provisions of Section 212(a)(14) are in effect and applicable to the particular case;⁷⁷

(3) that relatives or friends in the United States will assure his support.⁷⁸

The documentary evidence of support is usually required to be submitted in duplicate to the consular officer before whom the visa application is pending.

(d) **Affidavit of support.** The assurance that a relative or friend of a prospective immigrant will be responsible for his support in the United States is usually submitted in the form of a so-called affidavit of support.

(1) **Form of affidavit.** There are no prescribed forms to be used by persons in the United States who desire to furnish financial sponsorship in the form of a so-called affidavit of support. Each sponsor may furnish a statement in affidavit form to show his financial ability and willingness to contribute to the immigrant's support, giving due regard to the sponsor's obligations toward members of his own family and other persons. The statement of the sponsor usually has to include information regarding his income, and where material, information regarding his resources, obligations and expenses, and the plans and arrangements made for the applicant's support in the absence of a direct obligation toward him. The sponsor may attach to his affidavit a certified copy or notarized copy of his latest income tax return, a statement from an employer showing the employee's salary and the length and permanency of employment, a statement from an officer of a bank regarding the sponsor's account showing the date the account was opened and the present balance, or other evidence adequate to

⁷⁶ See ch. 24.

⁷⁷ See § 11, *supra*.

⁷⁸ Visa Office Bulletin No. 35, November 7, 1958.

establish the financial ability of the sponsor to carry out his financial undertaking toward the immigrant.⁷⁹

(2) **Probative value of affidavit of support.** Two highest state courts have ruled that an affidavit of support executed by a sponsor in behalf of a visa applicant constitutes a moral but not a legal obligation, and hence, is unenforceable in the courts.⁸⁰ The lessened significance of affidavits of support as public charge evidence in the light of these court decisions has been stressed by the Department of State when it instructed consular officers to be guided by the following considerations in determining the probative value of an affidavit of support:

"(a) An affidavit of support in itself does not establish that its beneficiary will not be likely to become a public charge. Such determination can be made only after the sponsor's relationship to the visa applicant, his motives in giving the affidavit, his financial resources and his financial responsibilities have been evaluated;

"(b) An affidavit of support executed by a financially responsible sponsor who is under a legal obligation to support the visa applicant such as a husband or wife will, as a rule, be satisfactory evidence that the applicant will not be likely to become a public charge;

"(c) In the absence of legal support responsibilities careful examination of the motives prompting the affiant to assume the moral responsibility reflected in the affidavit of support will be made. If there exist compelling or forceful ties between a visa applicant and his sponsor, such as close blood relationship or friendship of long standing, an affidavit of support will usually be favorably considered by a consular officer. On the other hand, an affidavit submitted by a casual friend or distant relative who has little or no personal knowledge of the visa applicant will have limited, if any probative value;

"(d) In connection with the determination suggested under (c) consular officers will usually request the sponsor to furnish detailed information relating to the motivation which prompted him to submit an affidavit of support, the length of time the sponsor and applicant have known each other, and the nature of the relationship, that is, former employer and employee, schoolmates, business associates, etc."⁸¹

(3) **Probative value of corporate affidavit of support.** In evaluating the probative value of a corporate affidavit of support the Department of State instructed consular officers to consider the following factors:

"(a) Does the corporation have authority under its charter to give assurance of support on behalf of an alien and to use funds of the corporation to contribute to the support of such alien?

⁷⁹ Department of State, "General Information regarding visas for immigrants," Form DSL-650, September 25, 1959.

⁸⁰ Department of Mental Hygiene of California v. Renel, 167 N.Y.S. (2d) 22 (City Ct., N.Y., 1957); *affd.* 173 N.Y.S. (2d) 231, 10 Misc (2d) 402 (App. Term. 1st Dept., 1958) and State ex rel. Attorney General v. Binder (1958) 356 Mich. 73, 96 N.W.(2d) 140.

⁸¹ Visa Office Bulletin No. 35, *supra*; see also Auerbach, "Recent Developments in the Immigration Field," *Department of State Bulletin*, December 30, 1957, pp. 1030, 1035.

"(b) Has the corporation explained the reasons for undertaking the financial obligation on behalf of the alien and if so, will any change in the management of the corporation in the future result in a withdrawal of the assurance or change in the arrangement made or contemplated?

"(c) If so authorized, has the corporation given assurances of support on behalf of other aliens; how many; how many have become self-supporting and how many will require financial assistance by the corporation?

"(d) What specific plans have been made by the corporation or are contemplated for the support of the alien to insure that funds will be available?

"(e) Will the promised assistance be available irrespective of the cause making assistance necessary or will it be limited to causes which may render the alien deportable under section 241(a)(8) of the Immigration and Nationality Act? If assistance is so limited, the affidavit of support will have no probative value for the purposes of section 212(a)(15) of the Act."⁸²

(e) **Public charge bond.** The public charge bond referred to above is an indemnity bond to hold harmless the United States and all States and their subdivisions against an alien's becoming a public charge. Such a bond can be used only to reimburse the United States or any political entity thereof for costs incurred because of an alien's having become a public charge. The bond cannot be drawn on for living or other expenses of the alien in order to prevent his becoming a public charge. Thus, a public charge bond in itself does not establish that an alien is not likely to become a public charge and its posting is considered only in addition to, and not in lieu of, other evidence to show that the alien is not likely to become a public charge. A consular officer, as a rule, will suggest the posting of a public charge bond in cases in which the alien appears to qualify in all other respects except that the financial evidence submitted is not sufficient to establish beyond question that the alien is eligible to receive a visa under Section 212(a)(15).⁸³

§ 13. Excluded aliens within one year from deportation.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and are excludable from admission into the United States if they:

- (1) have been excluded from admission and deported, and
 - (2) again seek admission within one year from the date of their deportation,
- unless prior to their reembarkation at a place outside the United States or their attempt to be admitted from foreign

⁸² Visa Office Bulletin No. 35, *supra*.

⁸³ Visa Office Bulletin No. 35, *supra*.

contiguous territory the Attorney General has consented to their reapplying for admission. (Section 212(a)(16)⁸⁴ and 22 CFR 41.91(a)(16) and 42.91(a)(16))

An alien is considered to have been "deported" if he has left the United States after having been ordered deported, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed. (Section 101(g)) Therefore, an alien who left the United States and traveled at his own expense to a country of his own choice is considered deported if an order of deportation has been entered against him.

(b) Blanket permission to reapply. The Immigration and Naturalization Service has granted blanket permission to reapply to aliens within this category who were deported from the United States prior to March 1, 1959, and on March 1, 1959 and at the time of their applications for visas have a parent, spouse or child who is a United States citizen or an alien lawfully admitted to the United States for permanent residence. (8 CFR 212.2)

Similar blanket permission has been granted by the Service to aliens in possession of Mexican nonresident alien border crossing cards who are admissible as visitors or students except for their removal or deportation before November 1, 1956 because of entry without inspection or lack of required documents. (8 CFR 212.6(e))

(c) Procedure. An application for consent to reapply within one year from the date of deportation for admission to the United States must be submitted to the Immigration and Naturalization Service on Form I-212.

The district director of the Immigration and Naturalization Service receiving application Form I-212 may grant or deny the application. If the decision is negative the applicant may appeal to a regional commissioner of the Immigration and Naturalization Service within fifteen days after the mailing of the notification of the decision. (8 CFR 212.2)

The fee for filing Form I-212 is \$5. (8 CFR 2.5)

In cases in which the alien is excluded for causes which can readily be removed or overcome he may be advised by the special inquiry officer of the Immigration and Naturalization Service that the application for permission to reapply for admission may be made at the time of exclusion.

⁸⁴ For text see Appendix A.

Notwithstanding the consent procedure described above, which is applicable to both nonimmigrants and immigrants, a nonimmigrant may also be admitted upon the exercise of administrative discretion described in Chapter 34, § 4.

§ 14. Aliens arrested and deported, or removed.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and are excludable from admission into the United States if they:

- (1) have been arrested and deported;
- (2) have fallen into distress and have been removed;
- (3) have been removed as alien enemies; or
- (4) have been removed at Government expense in lieu of deportation,

unless before their embarkation or reembarkation at a place outside the United States or their attempt to be admitted from foreign contiguous territory the Attorney General has consented to their applying or reapplying for admission. (Section 212 (a) (17))⁸⁵

An alien described in the preceding paragraph is required to obtain permission from the Attorney General to reapply for admission into the United States regardless of the period of time which may have elapsed since his deportation or removal. (22 CFR 41.91(a) (17) and 42.91(a) (17))

An alien is considered to have been "deported" if he has left the United States after having been ordered deported, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed. (Section 101(g)) Therefore, an alien who left the United States and traveled at his own expense to a country of his own choice is considered deported if an order of deportation had been entered against him.

(b) **Blanket permission to reapply.** The Immigration and Naturalization Service has granted blanket permission to reapply to aliens within this category who were deported from the United States prior to March 1, 1959, and on March 1, 1959 and at the time of their applications for visas have a parent, spouse or child who is a United States citizen or an alien lawfully admitted to the United States for permanent residence. (8 CFR 212.2)

Similar blanket permission has been granted by the Service to aliens in possession of Mexican nonresident alien border

⁸⁵ For text see Appendix A.

crossing cards who are admissible as visitors or students except for their removal or deportation before November 1, 1956 because of entry without inspection or lack of required documents. (8 CFR 212.6(e))

(c) Procedure. An application for consent to reapply for admission to the United States must be submitted to the Immigration and Naturalization Service on Form I-212.

The district director of the Immigration and Naturalization Service receiving application Form I-212 may grant or deny the application. If the decision is negative the applicant may appeal to a regional commissioner of the Immigration and Naturalization Service within fifteen days after the mailing of the notification of the decision. (8 CFR 212.2)

The fee for filing Form I-212 is \$5. (8 CFR 2.5)

Notwithstanding the consent procedure described above which is applicable to both nonimmigrants and immigrants, a nonimmigrant may also be admitted upon the exercise of administrative discretion described in Chapter 34, § 4.

(d) Basis for decision. The Central Office of the Immigration and Naturalization Service has ruled that permission to reapply for admission after arrest and deportation is not granted unless (1) unusual hardship would result to persons lawfully in the United States if the application should be denied, or (2) there is need for the services of the applicant in the United States, or (3) the applicant is a bona fide crewman who has no means of earning his livelihood other than by pursuing such calling which necessitates his coming to the United States, or (4) it is necessary for the applicant to enter the United States frequently across the international land border to purchase the necessities of life or in connection with the business in which he is engaged or for some other urgent reason. In addition it must be found that the alien is presently admissible to the United States.⁸⁶

§ 15. Stowaways.—Immigrants and nonimmigrants who are stowaways are ineligible to receive visas and are excludable from admission into the United States. (Section 212(a)(18))⁸⁷

⁸⁶ Central Office, *In the Matter of H.R.*, 5, I. & N. Dec. 769, June 2, 1954. Permission to reapply was not granted a crewman whose record showed a deliberate violation of landing privileges or who previously was deported as an overstayed crewman and who attempted to enter as a stowaway. (Regional Commissioner, *In the Matter of Z.*, Interim Decision 1051, February 15, 1960 and Regional Commissioner, *In the Matter of C. G.*, Interim Decision 1036, November 17, 1959)

⁸⁷ For text see Appendix A.

The term "stowaway" is not defined in the statute. Webster defines a stowaway as "one who conceals himself on a vessel, train, airship, etc., to obtain a passage."⁸⁸ Therefore, the provision of Section 212(a)(18) does not apply at the time of visa application, but only at the time of application for admission into the United States after the act of concealment has been committed. (22 CFR 41.91(a)(18) and 42.91(a)(18))

A nonimmigrant may be admitted upon the exercise of administrative discretion.⁸⁹

§ 16. Aliens who seek to enter the United States, or seek or sought to procure visa by fraud or willful misrepresentation.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and are excludable from admission into the United States if they:

(1) seek to procure or have sought to procure or have procured a visa or other documentation, or

(2) seek to enter the United States by fraud, or by willfully misrepresenting a material fact. (Section 212(a)(19))⁹⁰

Section 212(a)(19) consists of two parts: one which relates to fraud and misrepresentation in connection with the alien's visa application and the other which relates to fraud and misrepresentation in connection with the alien's seeking to enter the United States at a port of entry.

In both cases there must have been fraud or a misrepresentation. If there was misrepresentation it must have been willfully made and the misrepresentation must constitute a material fact. The two parts of Section 212(a)(19) and the elements of fraud, misrepresentation, willfulness and materiality are discussed below.

The admission of nonimmigrants, and the admission of immigrants who are close relatives of American citizens and permanent resident aliens, inadmissible under this provision, may be authorized upon the exercise of administrative discretion. (See Chapter 34)

(b) **Fraud or misrepresentation at time of visa application.** The first part of Section 212(a)(19) which relates to fraud and misrepresentation at the time of visa application refers to

⁸⁸ Webster's New International Dictionary of the English Language, unabridged, Second Edition.

⁸⁹ See ch. 34, § 4; for special procedure applicable to stowaways in exclusion proceedings, see ch. 37, § 5.

⁹⁰ For text see Appendix A.

"any alien who seeks to procure, or has sought to procure or has procured a visa or other documentation"⁹¹ by fraud or misrepresentation. This language clarifies that its prohibition applies retroactively as well as prospectively and that it covers both the attempt as well as the completed act of procuring a visa by fraud or misrepresentation. Its retroactivity extends beyond the effective date of the Immigration and Nationality Act, i.e., December 24, 1952, so that an alien who, before that date, sought to procure a visa by fraud is now ineligible to receive a visa. (22 CFR 41.91(a)(19)(i) and 42.91(a)(19)(i))⁹²

(c) **Fraud or misrepresentation at time of seeking entry into the United States.** The second part of Section 212(a)(19) which relates to fraud and misrepresentation at the time of entry into the United States refers to "any alien who . . . seeks to enter the United States" by fraud or misrepresentation. This provision, according to an interpretation by the Board of Immigration Appeals, which was approved by the Attorney General, is only prospective in its application. Hence, prior fraud or misrepresentation in seeking to enter the United States which falls within the second part of Section 212(a)(19) does not render an alien ineligible to receive a visa and does not result in a finding of inadmissibility. (22 CFR 41.91(a)(19)(iii) and 42.91(a)(19)(iii))⁹³ In other words, the second part of Section 212(a)(19) never operates to render an alien permanently ineligible to receive a visa or inadmissible to the United States, but simply constitutes a temporary barrier to his attempted entry when fraud and misrepresentation occur. It has no relation to past events whether or not they occurred before or after the effective date of the Act.⁹⁴

(d) **Fraud.** Section 212(a)(19) becomes operative only if the proscribed act was committed "by fraud" or "by willfully misrepresenting a material fact." The term "fraud," as used in Section 212(a)(19), must be defined in its commonly accepted legal sense. It consists of a false representation of a material

⁹¹ The term "other documentation" refers to any document with which an alien seeks to gain admission either as an alien or as a citizen and which normally facilitates admission. A United States citizen's identification card is "other documentation." (BIA, *In the Matter of O.*, 7, I. & N. Dec. 486, May 29, 1957)

⁹² BIA, *In the Matter of M.*, 6, I. & N. Dec. 149, May 19, 1954, approved by Attorney General, September 13, 1954.

⁹³ BIA, *In the Matter of M.*, *supra*.

⁹⁴ Therefore, a native and citizen of Mexico who attempted to enter the United States in 1954 by falsely claiming United States citizenship and who was returned to Mexico without a formal exclusion proceeding is not thereafter inadmissible as an alien who seeks to enter the United States by willfully misrepresenting a material fact. (BIA, *In the Matter of M.*, 6, I. & N. Dec. 752, October 18, 1955)

fact made with knowledge of its falsity and with intent to deceive the other party. The representation must be believed and acted upon by the party deceived to his disadvantage.⁹⁵ Inasmuch as the elements of fraud are more exacting than those of "willfully misrepresenting a material fact" as described below, the latter clause is more frequently applied in the administration of the immigration laws than the former.

(e) **"Willfully misrepresenting a material fact."** Since the enactment of Section 212(a)(19), a relatively large body of sometimes conflicting administrative rulings and court decisions have been rendered bearing on the meaning of the term "willfully misrepresenting a material fact."

(1) **Interpretation of term "material fact."** The interpretation of what constitutes a material fact, as used in Section 212(a)(19), has been fluid since the enactment of this provision in 1952. There is agreement that a misrepresentation as to the alien's identity which cuts off inquiry is material although the alien could have secured a visa had he revealed his true identity.⁹⁶ There is, however, a considerable area of doubt as to when a misrepresentation relates to identity and when it cuts off all inquiry.

The fluidity of interpretation of the term "material fact" is illustrated by two decisions of the Board of Immigration Appeals. On September 19, 1958, the Board held that misrepresentations in visa applications concerning parentage, whereabouts of parents, and residence in China from two to nine years of age were not material when the record does not establish that the misrepresentations concealed facts which either would have disclosed a ground of inadmissibility or might well have prompted a final refusal of the visa.⁹⁷ On November 12, 1959, the Board held that misstatements in visa application concerning country of birth, citizenship, and place of residence, all being directly related to the alien's identity, are material. Hence, when knowingly made, such misrepresentations invalidate the visa and create grounds of exclusion or deportation. In the same decision the Board stated:

"The true place of birth and nationality of an alien seeking to enter the United States (whether quota or nonquota) is a material fact, in that such fact identifies the alien. The correct places of residence prior to application for entry are also material. No precedents in sup-

⁹⁵ BIA, *In the Matter of G. G.*, 7, I. & N. Dec. 161, April 9, 1956.

⁹⁶ BIA, *In the Matter of S.C.*, 7, I. & N. Dec. 76, April 16, 1956; decided by Attorney General, May 8, 1956.

⁹⁷ BIA, *In the Matter of C.T.P.*, Interim Decision 953.

port of these conclusions are necessary. Correct country of birth, citizenship, and places of prior residence enable consular officials to make the required investigation to determine the admissibility of an alien to the United States under our immigration laws."⁹⁸

A decision by the Board, approved by the Attorney General, that a misrepresentation is not material if the alien would not have been denied a visa or refused admission had he told the truth which, if strictly applied, would have significantly narrowed the application of Section 212(a)(19), has been modified by subsequent rulings of the Board particularly in the *Matter of C. T. P.* and in the *Matter of V. B.*, *supra*.⁹⁹

The Department of State has developed criteria for the guidance of consular officers relating to the question of materiality which attempt to reconcile the conflicting views on this issue. These criteria are as follows:

⁹⁸ In the *Matter of V.B.*, Interim Decision 1035. The following decisions further illustrate the Board's rulings concerning materiality.

An alien who obtained a visa from the American consul by using her maiden name and stating that she was single, when, in fact, she was married, is held to have cut off inquiry and investigation of her background and gained advantage to which she was not otherwise entitled. Therefore, such alien is inadmissible as one whose visa was procured by fraud and willful misrepresentation of a material fact. (BIA, *In the Matter of C.*, 6, I. & N. Dec. 746, October 5, 1955)

A forged affidavit of support presented to the consular officer in connection with an application for a visa is a misrepresentation as to a material matter where the evidence indicates there was a great likelihood that the applicant would become a public charge if admitted to the United States and presentation of the affidavit prevented the consular officer from ascertaining the true facts. (BIA, *In the Matter of G.L.*, 7, I. & N. Dec. 464, April 5, 1957)

A nonimmigrant student who represented in his visa application that he had sufficient funds to finance his education in the United States when in fact he had only his passage money was clearly not qualified for student status at the time he applied for his nonimmigrant visa. Hence, his misrepresentation was a violation of § 212(a)(19). (BIA, *In the Matter of C.S.L.*, Interim Decision 1009, June 15, 1959)

The alien's failure in applying for an immigrant visa to divulge to the consular officer that he had been an unlawful resident of the United States for a period of six years cut off inquiry as to a substantial part of his past life. Hence, his misstatements were material and required his exclusion under § 212(a)(19) as having procured a visa by fraud or willful misrepresentation of a material fact. (BIA, *In the Matter of V.S.*, 7, I. & N. Dec. 306, August 17, 1956)

On the other hand, the Board held that a misrepresentation made to a consular officer is not material where the true facts, if known, would not have precluded issuance of a visa. Hence, the charge that a visa was procured by fraud and misrepresentation was not sustained where the alien's misrepresentation consisted of presenting a spurious check of \$3,600 to the consul, and the evidence did not establish that the alien was in fact a person likely to become a public charge at the time he applied for a visa. (BIA, *In the Matter of M.*, 7, I. & N. Dec. 222, May 23, 1956) The Board also held that a misrepresentation which cuts off some inquiry will not invalidate the visa unless it conceals a ground of inadmissibility to the United States. Therefore, respondent's resort to a spurious check (as evidence he would not become a public charge) to expedite action on his visa application did not amount to a misrepresentation of a material fact so as to invalidate the visa, since the facts indicate he was not inadmissible to the United States at the time. (BIA, *In the Matter of S.C.*, 7, I. & N. Dec. 76, approved by Attorney General, May 8, 1956)

⁹⁹ BIA, *In the Matter of G.M.*, 7, I. & N. Dec. 40, December 19, 1955; approved by Attorney General, April 2, 1956.

(i) **Misrepresentation relating to independent ground of ineligibility.** If the misrepresentation relates to the denial or concealment of an independent ground of ineligibility, such as a conviction for a crime involving moral turpitude or membership in the Communist Party, a denial or concealment of such information is always material. (United States v. Flores-Rodriguez (1956), 237 Fed.(2d) 405)

(ii) **Misrepresentation relating to identity.** A misrepresentation by a visa applicant as to his identity is always material irrespective of whether the revelation of the true facts would have uncovered a ground of ineligibility. A person's identity includes the following elements:

(aa) **Name.** A person's true and correct name is part of his identity and is always material. (Landon v. Clarke (1957), 239 Fed. (2d) 631)

(bb) **Marital status.** A misrepresentation as to marital status by a female applicant, if it involves a change of name, is always material because it forecloses the proper statutory investigation by the consular officer. (Landon v. Clarke, *supra*) Similarly, in applying the reasoning of this decision to the case of a male applicant, if in a given country he adopts his wife's name by local custom, a misrepresentation as to his marital status is material.

(cc) **Place and date of birth.** Place and date of birth are a part of a person's identity and as such are always material.

(iii) **Misrepresentation relating to prior residences.**

(aa) A denial or concealment of a residence of six months or more precludes the required statutory investigation of the visa applicant and therefore constitutes a material misrepresentation.

(bb) Except as provided in paragraph (cc), denial or concealment of a prior residence or visit of less than six months does not automatically constitute a material misrepresentation. If, however, the misrepresentation concealed facts which might have resulted in a refusal of the visa, it is considered material.

(cc) A denial or concealment of a visit or residence in the United States of any duration is always material in view of the particular significance a prior stay in the United States has on a visa application.

(iv) **"Rule of probability."** Upon the basis of recent judicial and administrative decisions (In re Field's Petition, 159 F.Supp. 144 (D.C., S.D. N.Y., 1958); U.S. ex rel. Jankowski v. Shaughnessy, 186 Fed.(2d) 580 (C.C.A. 2, 1951); Ablett v. Brownell, 240 Fed.(2d) 625 (C.A.D.C., 1957); BIA, *In the Matter of F.R.*, 6, I. & N. Dec. 813, December 20, 1955; BIA, *In the Matter of C.T.P.*, Interim Decision 953, September 19, 1958), the "rule of probability" has been evolved which applies to cases not governed by the interpretations heretofore stated. This rule requires a showing that the misrepresentation, in order to be held material, concealed facts which might have resulted in a proper refusal of the visa. By way of illustration of this rule, a denial or concealment in a *nonimmigrant* visa application that a previous *immigrant* visa application had been refused would generally be considered material since the disclosure might well have prompted a refusal of the *nonimmigrant* visa on the ground that the applicant was not a *bona fide* *nonimmigrant*. Thus, if the misrepresentation relates to a ground of ineligibility which necessitates the weighing of intangible factors which *per se* are not grounds of ineligibility, but which require the exercise of judgment on the part of the consular officer as, for example, whether an applicant is afflicted with psychopathic personality, or is one likely to become a public charge, it is not necessary to show the actual

existence of a ground of ineligibility to render the misrepresentation material. It is sufficient to show the probable existence of a ground of ineligibility.¹

(2) **"Willfully misrepresenting."** Once a determination has been made that the alien has misrepresented a material fact, the additional determination has to be made as to whether the misrepresentation was made "willfully." The Department of State has developed the following criteria for the determination of whether a misrepresentation was made "willfully":

(i) The term "willfully" as used in Section 212(a)(19) of the Act is interpreted to mean knowingly and intentionally as distinguished from accidentally or inadvertently (*Browder v. United States*, 312 U.S. 335 (1941)). If an alien intentionally makes a material misrepresentation with knowledge of its falsity, he is ineligible to receive a visa under Section 212(a)(19) of the Act. The alien's motivation in making the false statement is irrelevant, as a finding of willfulness may be made even though the alien did not make the misrepresentation in order to gain an advantage under the immigration law, unless the case falls within the provisions of 22 CFR 41.91(a)(19)(i) or 22 CFR 42.91(a)(19)(i), effective August 15, 1960. (25 Fed. Reg. 7017, July 23, 1960)

(ii) The fact that Congress used the terms "fraud" and "willfully misrepresenting a material fact" in the alternative in Section 212(a)(19) of the Act clearly indicates an intent to set a lower standard than fraud. Otherwise the phrase "willfully misrepresenting a material fact" would not have been used.

(iii) In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought. Consular officers warn applicants of the serious results of making any misstatements in an application for a visa, particularly with regard to marital status and to visits or residences of short duration. Female applicants in particular are cautioned with respect to questions concerning their date of birth, and consular officers make clear to all applicants that the information contained in their visa files is strictly confidential.²

The Board of Immigration Appeals, on the other hand, has held that a willful misrepresentation under Section 212(a)(19) must be made with knowledge of its falsity and "with actual intent to deceive so that an advantage under the immigration laws might be gained to which the alien would not have otherwise been entitled."³

Recent legislation supports the view that the Board's interpretation of the term "willfully" is too narrow and does not reflect legislative intent. Section 7 of the Act of September 11, 1957,⁴ statutorily exempts from deportation certain immigrants who had misrepresented their nationality, place of birth, iden-

¹ Visa Office Bulletin No. 61, August 15, 1960.

² Visa Office Bulletin No. 61, August 15, 1960.

³ In the Matter of G.G., 7, I. & N. Dec. 161, April 9, 1956.

⁴ 71 Stat. 640.

tity, or residence, in applying for a visa, predicated upon their fear of persecution because of race, religion or political opinion if repatriated to their former home or residence. The statute specifically stipulates that the benefit of this provision shall not accrue to an alien who committed the misrepresentation for the purpose of evading the quota restrictions of the immigration laws or an investigation at the place of his former home, residence or elsewhere. This relief measure would not have become necessary had Congress intended that a "willful misrepresentation must be made with actual intent to deceive so that an advantage under the immigration laws might be gained to which the alien would not have otherwise been entitled."

(f) Misrepresentation for fear of forcible repatriation. The Conferees on the Immigration and Nationality Act made the following statement in connection with Section 212(a)(19):

"It is . . . the opinion of the conferees that the sections of the bill which provide for the exclusion of aliens who obtained travel documents by fraud or by willfully misrepresenting a material fact should not serve to exclude or to deport certain refugees who, in fear of being forcibly repatriated to their former homelands, misrepresented their place of birth when applying for a visa and such misrepresentation did not have as its basis the desire to evade the quota provisions of the law or an investigation in the place of their former residence. The conferees wish to emphasize that in applying fair humanitarian standards in the administrative adjudication of such cases, every effort is to be made to prevent the evasion of law by fraud and to protect the interest of the United States."⁵

The legislative intent expressed by the conferees is reflected in visa regulations which provide that the provisions of Section 212(a)(19) are not applicable if the fraud or misrepresentation was committed by an alien at the time he sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and he was in fear of being repatriated to his former homeland had he disclosed the facts in his case in connection with his application for a visa to enter the United States. However, Section 212(a)(19) is held applicable if the misrepresentation was committed for the purpose of evading the quota restrictions of the United States immigration laws or investigation of the alien's record at the place of his former residence or elsewhere in connection with an application for a visa. (22 CFR 41.91(a)(19)(i) and 42.91(a)(19)(i))

(g) Section 212(a)(19) and predecessor provisions. The Displaced Persons Act of 1948,⁶ and the Refugee Relief Act of

⁵ House Report No. 2096, 82nd Congress, Second Session, p. 128.

⁶ Section 10, 62 Stat. 1013.

1953,⁷ contain provisions similar to those of Section 212(a)(19). Visa regulations provide that an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of Section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of Section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible thereunder, is considered ineligible to receive a visa under the provisions of Section 212(a)(19) of the Act. (22 CFR 41.91(a)(19)(ii) and 42.91(a)(19)(ii))

§ 17. Immigrants not properly documented.

(a) **Definition and summary.** Immigrants are excludable from admission into the United States if, at the time of application for admission:

(1) they are not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card or other valid entry document required by law;⁸

(2) they are not in possession of a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General;⁹

(3) they are in possession of a visa issued to them without compliance with the appropriate provisions of law;

(4) they are found not properly chargeable to the quota specified in the immigrant visa; or

(5) they are specified as nonquota immigrants but not entitled to such classification. (Sections 211(a) and (e), 212(a)(20) and (21))¹⁰

(b) **Relief from exclusion.** An immigrant inadmissible because he is not properly chargeable to the quota specified in the immigrant visa, or because he is not a nonquota immigrant, although holding a nonquota immigrant visa, may, if otherwise admissible, be admitted in the discretion of the Attorney General, if:

⁷ Section 11(e), 67 Stat. 405.

⁸ See ch. 13, § 1 for a discussion of the visa requirement for immigrants and exceptions, and the validity of immigrant visas.

⁹ See ch. 13, § 2 for a discussion of the passport requirement for immigrants and exceptions.

¹⁰ For text see Appendix A.

(1) his inadmissibility was not known to the alien and could not have been ascertained by him by the exercise of reasonable diligence; and

(2) the entire number of immigrant visas which may be issued to quota immigrants under the same quota for the fiscal year, or the next fiscal year, has not yet been issued. (Section 211(c) and (d))¹¹

A finding that the entire number of quota immigrant visas which may be issued has not yet been issued is permitted if a quota number is available for the fiscal year in which the alien was admitted or the next following fiscal year, or, in the alternative, for the fiscal year in which the notification by the Attorney General of a grant of a waiver under Section 211(c) is received in the Department of State or the fiscal year following the submission of such notification. (22 CFR 42.60(c))¹²

§ 18. Nonimmigrants not properly documented.

(a) Definition and summary. Nonimmigrants are:

(1) ineligible to receive visas and excludable from admission into the United States if they are not in possession of a passport valid for a minimum period of six months from the date of the expiration of the initial period of their admission or contemplated initial period of stay authorizing them to return to the country from which they came or to proceed to and enter some other country during such period; and

(2) excludable from admission if, at the time of application for admission, they are not in possession of a valid non-immigrant visa or border crossing identification card. (Section 212(a) (26))¹³

A passport which is valid indefinitely for the return of the bearer to the country whose government issued the passport is considered to have the required minimum period of validity. (22 CFR 41.91(a) (26))

(b) Statutory exceptions and waivers.

(1) Exceptions from passport validity requirement. Aliens in the following classes of nonimmigrants are required to present

¹¹ Exercise of discretionary authority was denied a twenty-year-old Italian girl who was married a few days before departing for the United States after having signed before consular officer a statement in Italian and English placing her on notice that marriage prior to entering the United States would invalidate the visa. (BIA, *In the Matter of C.*, Interim Decision 1080, May 31, 1960)

¹² See also BIA, *In the Matter of R.*, 7, I. & N. Dec. 304, August 16, 1956.

¹³ For text see Appendix A.

a passport which is valid and unexpired only on the date of their application for admission into the United States:

- (i) A-1 and A-2;¹⁴
 - (ii) G-1, G-2, G-3 and G-4;¹⁵
 - (iii) NATO-1, NATO-2, NATO-3, NATO-4 and NATO-6.¹⁶
- (Section 102, 22 CFR 41.91(f) and 8 CFR 212.1)

(2) **Waiver of passport and visa requirement.** Passport and visa requirements may be waived in the case of nonimmigrants by joint action of the Attorney General and the Secretary of State under the conditions specified in Section 212(d)(4).¹⁷

(3) **Extension of passport validity by agreement.** Certain foreign governments have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of six months beyond the expiration date specified in the passports. These agreements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport. Governments of the following countries have entered into such agreements:

Austria (Reisepass only)	Iceland
Bahamas	India
Bolivia	Ireland
Brazil	Israel
Canada	Mexico
Ceylon	Monaco
Chile	The Netherlands
Colombia	Pakistan
Cuba	Peru
Dominican Republic	Portugal
Ethiopia	Spain
Finland	Switzerland
Germany (Reisepass and Kinderausweis)	United Kingdom (including Jersey and Guernsey and its Dependencies)
Greece (issued in Greece only)	Venezuela. ¹⁸
Guatemala	
Honduras	

§ 19. Immigrants ineligible to citizenship.

(a) **Definition and summary.** Immigrants who are ineligible to citizenship are ineligible to receive visas and are excludable

¹⁴ See ch. 18, § 3.

¹⁵ See ch. 19, § 4.

¹⁶ See ch. 20, §§ 3, 4 and 5.

¹⁷ See ch. 29 for a full discussion of the passport and visa requirements for non-immigrants and applicable waivers.

¹⁸ Department of State, Public Notice 176, October 26, 1960, 25 Fed. Reg. 10500.

from admission into the United States. (Section 212(a)(22))¹⁹ This disqualification does not extend to nonimmigrants.

The term "ineligible to citizenship" means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States:

(1) under Section 3(a) of the Selective Training and Service Act of 1940, as amended,²⁰

(2) under Section 4(a) of the Selective Service Act of 1948, as amended,²¹

(3) under any section of the Immigration and Nationality Act,

(4) under any other act, or

(5) under any law amendatory of, supplementary to, or in substitution for, any such sections or acts. (Section 101(a)(19))

Section 315(a) of the Immigration and Nationality Act declares permanently ineligible to become a citizen of the United States:

"... any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground. . . ."²²

In addition, the Act provides in Section 314 that:

"A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military, air, or naval forces of the United States, or who, having been duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or who, whether or not having been duly enrolled, went or shall go beyond the limits of the United States, with intent to avoid any draft into the military, air, or naval service, lawfully ordered, shall, upon conviction thereof by a court martial or a court of competent jurisdiction, be permanently ineligible to become a citizen of the United States. . . ."²³

(b) **Federal draft laws and the alien.** Federal draft laws have subjected different groups of aliens at different times to the draft but, in general, have simultaneously permitted an

¹⁹ For text see Appendix A.

²⁰ 54 Stat. 885; 55 Stat. 844.

²¹ 62 Stat. 605; 65 Stat. 76.

²² 66 Stat. 242, 8 U.S.C. 1426, F.C.A. 8 § 1426.

²³ 66 Stat. 241, 8 U.S.C. 1425, F.C.A. 8 § 1425.

application for exemption from the draft in return for a forfeiture of eligibility for citizenship. No attempt is made here to present a detailed analysis of the various draft laws as they have affected aliens in the United States. Generally speaking, the Selective Training and Service Act of 1940²⁴ permitted aliens in the United States who were citizens of neutral countries to request exemption from military service by filing DSS Form 301, "Application by Alien for Relief from Military Service." An alien who filed this application form, as a consequence, lost his right to become a citizen of the United States. Under the Selective Service Act of 1948²⁵ aliens were entitled to claim exemption from service by filing SSS Form 130, "Application by Alien for Relief from Training and Service." The Universal Military Training and Service Act²⁶ which became effective on June 19, 1951 confined the privilege of aliens to request relief from military service to those who were admitted to the United States for other than permanent residence. As under previous law the filing of this application generally results in a loss of the right to become a citizen of the United States.

(c) **Scope of ineligibility.** The definition of the term "ineligible to citizenship," as implemented by Sections 314 and 315(a), shows the broad application of this provision to immigrants who under its terms are made inadmissible to the United States. It applies both to aliens who have sought statutorily permissible relief from military service in exchange for a forfeiture of their eligibility to citizenship and to persons who, for other reasons, are permanently ineligible to become citizens. It has therefore been held that a native born United States citizen who lost his citizenship by reason of desertion from the armed forces during time of war for which he was convicted by general court-martial and dishonorably discharged is permanently debarred from becoming a citizen and therefore falls under the prohibition of Section 212(a)(22).²⁷

The broad language of this provision has superseded or modified administrative and court rulings which, under earlier statute, granted relief from inadmissibility to aliens who had applied for exemption from military service although the conditions for such applications were not present.²⁸

²⁴ 54 Stat. 885; 55 Stat. 844.

²⁵ 62 Stat. 605.

²⁶ 65 Stat. 76.

²⁷ BIA, *In the Matter of D.E.*, 6, I. & N. Dec. 698, August 25, 1955; see also BIA, *In the Matter of B.M.*, 6, I. & N. Dec. 756, October 19, 1955.

²⁸ A Mexican national who filed application for exemption from military service as a neutral alien on Form DSS-301 on May 28, 1942, was not ineligible to citizenship

Before the enactment of the Immigration and Nationality Act the Supreme Court held in *Moser v. United States*²⁹ that an alien who "had sought information and guidance from the highest authority to which he could turn" and was misled to believe that he would not lose his right to citizenship by applying for relief from military service did not, as a result, become ineligible to citizenship. While the *Moser* case was decided under the predecessor statute to Section 212(a)(22), the legislative history of the latter provision seems to indicate that Congress intended to continue the *Moser* doctrine.³⁰ However, as the Board of Immigration Appeals points out, the Supreme Court's decision in the *Moser* case was based on a finding that the Department of State had acquiesced in the alien's claim of a right to exemption from military service without debarment from citizenship and that it was not made clear to him that the claim of exemption would result in disqualification to citizenship. It was also found that had this been made clear, the alien would not have claimed exemption. The *Moser* doctrine therefore does not apply if an alien claimed exemption after he was made aware of the consequences.³¹

Once an alien has become ineligible to citizenship by claiming exemption from military service, his subsequent military service does not relieve him from the consequences of this Act

under § 3(a) of the Selective Training and Service Act of 1940, as Mexico was no longer a neutral country on the date of the filing of his application. When such an alien, however, has been relieved from military service as a consequence of his application on Form DSS-301 he is held to be permanently debarred from citizenship under the provisions of § 315 of the Immigration and Nationality Act and also falls within the provisions of §§ 101(a)(19) and 212(a)(22) of the Act. (BIA, *In the Matter of Z.*, 6, I. & N. Dec. 766, October 21, 1955)

Since under the Selective Training and Service Act of 1940 Palestine was regarded as a neutral country, persons who applied for relief from military service by filing Form DSS-301 asserting the neutrality of Palestine and received exemption from military service as a result thereof are now in effect estopped from denying the neutrality of Palestine at the time of their respective applications. A native born citizen of Palestine who filed Form DSS-301 on June 16, 1943 claiming exemption from United States military service under the provisions of § 3(a) of the Selective Training and Service Act of 1940 is ineligible to citizenship. (BIA, *In the Matter of D.*, 5, I. & N. Dec. 301, June 23, 1953)

A lawful permanent resident of the United States who applied for and received relief from military training and service under the Universal Training and Service Act of 1951 is ineligible to citizenship under § 315(a) and inadmissible under § 212(a)(22) although he was not entitled under the law to apply for and receive such exemption from military training and service. (BIA, *In the Matter of R.*, 6, I. & N. Dec. 140, May 12, 1954)

²⁹ (1951) 341 U. S. 41, 95 L. ed. 729, 71 Sup. Ct. 553.

³⁰ Senate Report No. 1515, 81st Congress, Second Session, p. 725, and BIA, *In the Matter of B.*, 5, I. & N. Dec. 625, January 15, 1954; also BIA, *In the Matter of M. and G.*, 5, I. & N. Dec. 206, April 22, 1953.

³¹ BIA, *In the Matter of S.*, 7, I. & N. Dec. 561, August 29, 1959; see also BIA, *In the Matter of G.*, 5, I. & N. Dec. 106, February 10, 1953.

inasmuch as Congress has not declared that by virtue of such subsequent service the earlier disqualification would be erased.³²

The Supreme Court has held that ineligibility to citizenship results from the making of the application for relief from military service irrespective of whether the application actually has led to deferment.³³

§ 20. Draft evaders.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if they have departed from, or have remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency, except aliens who were at the time of such departure nonimmigrants and who seek to enter the United States as nonimmigrants. (Section 212(a) (22))³⁴

While aliens applying for nonimmigrant visas are not rendered ineligible by this provision if they were also nonimmigrants at the time of their departure from the United States, other nonimmigrants may be admitted upon the exercise of administrative discretion.³⁵

(b) **National emergency.** The existence of a national emergency which, in addition to a state of war, brings into play the provision of inadmissibility described under (a), was proclaimed by the President on December 16, 1950.³⁶ This proclamation is still in effect. Earlier, on September 8, 1939, the President proclaimed the existence of a limited national emergency.³⁷ On May 27, 1941, the President proclaimed the existence of an unlimited national emergency.³⁸ While the emergencies proclaimed on September 8, 1939 and May 27, 1941 were terminated on April 28, 1952, when the Treaty of Peace with Japan came into force,³⁹ the emergency proclaimed on December 16, 1950 remained in effect. Consequently, a state of national emergency has continuously existed since Septem-

³² BIA, *In the Matter of S.*, *supra*; ruling by Attorney General, *In the Matter of G.*, 2, I. & N. Dec. 545, June 9, 1947; *Jubran v. United States*, 255 Fed. (2d) 81 (C.C.A. 5, 1951).

³³ *Ceballos v. Shaughnessy* (1957) 352 U. S. 599, 1 L. ed. (2d) 583, 77 Sup. Ct. 545.

³⁴ For text see Appendix A.

³⁵ See ch. 34, § 4.

³⁶ Proclamation No. 2914, 15 Fed. Reg. 9029.

³⁷ Proclamation No. 2352, 4 Fed. Reg. 3851.

³⁸ Proclamation No. 2487, 6 Fed. Reg. 2617.

³⁹ Proclamation No. 2974, 17 Fed. Reg. 3812.

ber 8, 1939. Therefore, visa regulations provide that an alien will be refused a visa if, having other than nonimmigrant status, he departed from, or remained outside of the United States, on or after September 8, 1939, to avoid or evade training or service in the United States armed forces. (22 CFR 41.91(a)(22) and 42.91(a)(22))

(c) **Scope of inadmissibility.** In ruling on the predecessor statute to Section 212(a)(22)⁴⁰ the Attorney General held that this provision intended to cover not only those who escaped from an obligation already imposed but also those who escaped from an obligation which would arise but for their avoiding act. He held it applicable to all for whom military service is an imminent possibility.⁴¹

A person who has lost his United States citizenship under the provisions of Section 401(j) of the Nationality Act of 1940, as amended,⁴² is inadmissible, as an alien, under Section 212(a)(22) in view of the similarity of the language in these two sections.⁴³ If an alien intended to return to the United States but voluntarily assented to the wishes of his parents that he remain abroad because they were unwilling to have him serve in the armed forces of the United States, the motive of the parents is imputed to the child.⁴⁴

In evaluating whether an alien departed from, or remained outside the United States to avoid or evade military service, his behaviour in relation to his responsibilities under the selective service laws has to be considered. In this connection the Board of Immigration Appeals held it significant that the alien did not inform the local draft board of his prearranged plan to leave the United States; that he did not seek permission to leave; or ask advice from the Selective Service Board concerning his status in the event of his departure; also, that he did not notify the Selective Service System that he had changed his residence until he was beyond their jurisdiction; and that he replied to demands from the local draft board requesting him to return by stating that he had changed residence and was not liable for military service.⁴⁵ The alien's testimony as to his motives for departure from, or remaining

⁴⁰ Section 3 of the Act of February 5, 1917, as amended (39 Stat. 875; 58 Stat. 746).

⁴¹ Attorney General, *In the Matter of V.D.*, 2, I. & N. Dec. 417, April 4, 1946.

⁴² 54 Stat. 1169; 58 Stat. 746.

⁴³ BIA, *In the Matter of B.B.*, 6, I. & N. Dec. 146, May 17, 1954.

⁴⁴ BIA, *In the Matter of D.*, 6, I. & N. Dec. 485, January 4, 1955.

⁴⁵ BIA, *In the Matter of V.*, 6, I. & N. Dec. 186, June 30, 1954.

outside the United States are not conclusive where his testimony is clearly contradicted by his conduct.⁴⁶

§ 21. Narcotic law violators and illicit traffickers in narcotic drugs.

(a) **Definition and summary.** Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if:

(1) they have been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of, or traffic in narcotic drugs or marihuana;

(2) they have been convicted of a violation of, or conspiracy to violate any law or regulation relating to the control of narcotic drugs or marihuana; or

(3) the consular officer or immigration officers know or have reason to believe they are, or have been, illicit traffickers in narcotic drugs or marihuana. (Section 212(a)(23), as amended)⁴⁷

The admission of nonimmigrants inadmissible under this provision may be authorized upon the exercise of administrative discretion.⁴⁸

(b) **Scope.** The scope of this ground of inadmissibility has been broadened since the enactment of the Immigration and Nationality Act by amendments contained in the Narcotic Control Act of 1956⁴⁹ which includes conspiracy to violate a narcotic law and the illicit possession of narcotics as grounds of inadmissibility.⁵⁰ The Act of July 14, 1960⁵¹ clarified that a conviction of an alien for violation of any law relating to illicit possession of marihuana brings him within the scope of this ground of inadmissibility.

Personal gain or profit from the transaction is not required to render an alien inadmissible as an "illicit trafficker" who knowingly and consciously acted as a conduit in the transfer of

⁴⁶ BIA, *In the Matter of B.B.*, *supra*; see also BIA, *In the Matter of G.R.*, 3, I. & N. Dec. 141, 153, September 29, 1948.

⁴⁷ For text see Appendix A.

⁴⁸ See ch. 34, § 4.

⁴⁹ Act of July 18, 1956 (70 Stat. 575).

⁵⁰ For background of original provision, see House Report No. 1365, 82nd Congress, Second Session, p. 50. The broadening amendment is considered retroactive in its application. An alien is therefore considered ineligible to receive a visa irrespective of whether the conviction for illegal possession of narcotic drugs or for conspiracy to violate any law or regulation relating to narcotic drugs occurred before or after July 18, 1956. (22 CFR 41.91(a)(23) and 42.91(a)(23))

⁵¹ Section 8, Public Law 86-648 (74 Stat. 505).

marihuana between a dealer and a customer of the dealer.⁵² An alien who was involved in only one purchase of narcotics abroad for resale in the United States is considered an illicit trafficker.⁵³

§ 22. Certain immigrants having arrived in foreign contiguous territory or adjacent islands on nonsignatory lines.

(a) **Definition.** Immigrants are ineligible to receive visas and are excludable from admission into the United States if they seek admission from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a non-signatory line, or if signatory, a noncomplying transportation line under Section 238 unless either they:

(1) have resided for at least two years subsequent to arrival in such territory or adjacent islands, or

(2) are (i) native-born citizens of certain independent countries of the Western Hemisphere, or (ii) returning resident aliens. (Section 212(a)(24))⁵⁴

Although the statute makes this ground of inadmissibility applicable to immigrants and nonimmigrants, the Attorney General, under the authority contained in Section 212(d)(3),⁵⁵ has waived it for all nonimmigrants. (8 CFR 212.4 and 22 CFR 41.91(a)(24))

The term "contiguous territory" as used in Section 212(a)(24) refers to Canada and Mexico. The term "adjacent islands" includes St. Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea. (Section 101(b)(5)) It has been determined administratively that British Honduras is to be considered an "adjacent island."

(b) **Background.** The Immigration and Nationality Act, in Section 238(a), as did previous statutes, authorizes the Attorney General to enter into contracts with transportation lines for the entry and inspection of aliens coming to the United States through foreign contiguous territory or adjacent islands. The primary purpose of this provision is to protect transporta-

⁵² BIA, *In the Matter of R.H.*, 7, I. & N. Dec. 675, March 6, 1958. The challenge of this decision by the courts as far as it treats marihuana as a narcotic drug was overcome by the amendment of July 14, 1960, *supra*. For background see House Report No. 1202, 86th Congress, Second Session, p. 3.

⁵³ BIA, *In the Matter of P.*, 5, I. & N. Dec. 190, April 6, 1953.

⁵⁴ For text see Appendix A.

⁵⁵ See ch. 34, § 4.

tion lines bringing aliens directly to the United States, which have to comply with the various American laws regulating passenger traffic, from competition of other lines which bring aliens to contiguous territory or adjacent islands and, in the absence of a contract with the Attorney General, are not subject to these provisions of American law. The statute specifically requires the Attorney General to exercise due care "to avoid any discriminatory action in favor of transportation companies" transporting to contiguous territory or adjacent islands aliens destined to the United States.

Transportation companies with which the Attorney General enters into contracts are required to comply with all the requirements of the Immigration and Nationality Act which would apply if these companies were bringing aliens directly to ports of the United States.

(c) **Scope.** In the case of any immigrant who applies for a visa in an adjacent island or contiguous territory or who seeks admission from these areas, a determination must be made whether he arrived there on a vessel or aircraft of a nonsignatory line and, if so, whether he has resided there for at least two years subsequent to his arrival, or whether he benefits from the statutory, regulatory, or administrative exceptions and interpretations applicable to this provision, as described under (d) below.⁵⁶

(d) **Summary of statutory, regulatory and administrative exceptions.** The provision of Section 212(a)(24) is subject to the following statutory, regulatory and administrative exceptions:

(1) **Statutory exceptions.** The provision is inapplicable to returning resident aliens and to native-born citizens of certain countries in the Western Hemisphere which are nonquota areas.⁵⁷

(2) **Regulatory exceptions.** Visa regulations clarify that the provision does not apply to the following classes of aliens:

(i) An alien who is a native of an adjacent island or foreign contiguous territory and who is seeking to enter the United States directly from an adjacent island, or from foreign contiguous territory;

⁵⁶ The list of lines with which the Attorney General has entered into contracts, the so-called signatory lines, is available at all offices of the Immigration and Naturalization Service.

⁵⁷ See ch. 7, § 4.

(ii) An alien who proceeded to an adjacent island or foreign contiguous territory by nonsignatory carrier and who subsequently proceeded to Canada by signatory carrier and seeks to enter the United States from Canada, regardless of the method by which he first entered the adjacent island or foreign contiguous territory;

(iii) An alien who proceeded from the United States by a nonsignatory carrier to an adjacent island or foreign contiguous territory from which he seeks to reenter the United States, if, at the time of his last entry into the United States, he would not have been ineligible to receive an immigrant visa under the provisions of Section 212(a) (24). (22 CFR 42.91(a) (24))⁵⁸

(3) **Administrative interpretations.** Administrative interpretations and practices have tended to limit the scope of Section 212(a) (24) :

(i) An alien who has entered an adjacent island or foreign contiguous territory by a nonsignatory transportation line and is therefore ineligible to receive a visa under Section 212(a) (24) may remove this ground of ineligibility to receive a visa by leaving the contiguous territory or adjacent island and reentering it on a signatory transportation line. For example, an alien who has entered Canada on a nonsignatory line removes the ground of ineligibility to receive a visa under Section 212(a) (24) by leaving Canada and reentering it on a signatory transportation line.

(ii) The Immigration and Naturalization Service has, on occasion, authorized a transportation line to enter retroactively into a contract with the Attorney General in order to exempt *nunc pro tunc* an immigrant from the excluding provisions of Section 212(a) (24).

(iii) The Board of Immigration Appeals, in a decision approved by the Attorney General, held that an alien brought to Canada on a United States Army Transport was not inadmissible under the predecessor statute in the Immigration Act of 1917.⁵⁹

§ 23. Illiterate immigrants.

(a) **Definition.** Immigrants who cannot read and understand some language or dialect are ineligible to receive visas

⁵⁸ BIA, *In the Matter of M.*, 6, I. & N. Dec. 735, September 26, 1955.

⁵⁹ BIA, *In the Matter of H.*, 4, I. & N. Dec. 290, March 6, 1951, and August 17, 1951.

and excludable from admission into the United States unless they fall within one of the classes of aliens statutorily exempted from this provision as described under (b). (Section 212(a)(25))⁶⁰ The literacy requirement does not apply to nonimmigrants. (Section 212(d)(1))

(b) **Exceptions.** The following classes of immigrants are exempted from the literacy requirement:

- (1) Aliens who are not over sixteen years of age;
- (2) Aliens lawfully admitted for permanent residence who are returning from a temporary visit abroad;
- (3) Aliens who are physically incapable of reading;
- (4) An alien who is the parent, grandparent, spouse, daughter, or son of an admissible alien, or of any alien lawfully admitted for permanent residence, or of any citizen of the United States, if accompanying such admissible alien, or coming to join such citizen or lawfully admitted alien;
- (5) Aliens who prove that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether the persecution is evidenced by overt acts or by laws or governmental regulations that discriminate against such aliens or any group to which they belong because of their religious faith. (Section 212(a)(25) and (b)⁶¹ and 22 CFR 42.91(a)(25))

A United States citizen, a lawful permanent resident alien and an accompanying alien may, regardless of their age, confer the benefits of the exemptions from the literacy requirement, described under (4) above, on a parent and grandparent. (22 CFR 42.91(a)(25)) For example, an illiterate grandparent is exempted from the literacy requirement if he accompanies his infant grandson who is a United States citizen, a lawful permanent resident or a returning resident alien.

(c) **Procedure.** In order to ascertain whether an alien can read, consular officers and immigration officers are using slips of uniform size, prepared under the direction of the Attorney General. These slips contain not less than thirty nor more than forty words in ordinary use, printed in plainly legible

⁶⁰ For text see Appendix A. For history of the literacy requirement see ch. 1, § 9.

⁶¹ For text see Appendix A. A person is "over sixteen years of age" the day after his sixteenth birthday anniversary. Consequently, a person is exempted from the literacy requirement through the day of his sixteenth birthday anniversary but it applies to him the day thereafter. A person's sixteenth birthday anniversary is sometimes referred to colloquially as his "sixteenth birthday" although, in fact, it is his seventeenth birthday.

type, in one of the various languages or dialects in which the alien desires to be examined. (Section 212(b))⁶²

Interpreting the equivalent literacy requirement in the Immigration Act of 1917 the Board of Immigration Appeals, in a decision approved by the Attorney General, held that the reading test must be practical and that the reading material must be phrased in everyday language.⁶³

§ 24. Aliens accompanying helpless aliens.—Immigrants and nonimmigrants are excludable from admission into the United States if they accompany another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy, and their protection or guardianship is required by the alien ordered excluded and deported. (Sections 212(a) (30),⁶⁴ 237(e))

A nonimmigrant may be admitted upon the exercise of administrative discretion.⁶⁵

The ground of inadmissibility described here does not arise at the time of application for a visa inasmuch as the accompanying helpless alien would not appear eligible to receive a visa.

§ 25. Subversives—Present and past members of proscribed organizations and advocates of proscribed doctrines.

(a) **General.** Three categories of aliens are inadmissible for security grounds under the Immigration and Nationality Act:

(1) Aliens seeking to enter to engage in prejudicial activities, discussed in Section 26, below;

(2) Aliens likely to endanger the public safety, discussed in Section 27, below; and

(3) present and past members of proscribed organizations and advocates of proscribed doctrines, discussed here.

These three categories resemble closely those enumerated in the Internal Security Act of 1950.⁶⁶

(b) **Definition.** Immigrants and nonimmigrants are ineligible to receive visas and inadmissible into the United States if they are, or at any time have been, members of one of the following classes:

⁶² For text see Appendix A.

⁶³ BIA, *In the Matter of R.*, 2, I. & N. Dec. 620, June 10, 1946 and June 17, 1946.

⁶⁴ For text see Appendix A.

⁶⁵ See ch. 34, § 4.

⁶⁶ See ch. 1, § 13(h).

- (1) Anarchists;
- (2) Aliens who advocate or teach, or who are members of or affiliated with, an organization that advocates or teaches opposition to all organized government;
- (3) Aliens who are members of or affiliated with the Communist Party of the United States or any other Communist or totalitarian party or its affiliate, predecessor or successor organization;
- (4) Aliens who otherwise advocate, teach or propagate in any form (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law or (ii) the economic, international and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship. (Section 212(a)(28))⁶⁷

Exempt from this provision are certain foreign government officials and international organization aliens;⁶⁸ other nonimmigrants may be admitted upon the exercise of administrative discretion.⁶⁹ Immigrants may be admitted if they qualify as "defectors" as described below.

The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" refer to systems of government not representative, in fact, characterized by:

- (1) the existence of a single political party, organized on a dictatorial basis, with so close an identity between the party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit; and
- (2) the forcible suppression of opposition to such party. (Section 101(a)(37))

The term "world communism" means a revolutionary movement, the purpose of which is to establish a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement. (Section 101(a)(40))⁷⁰

⁶⁷ For text see Appendix A.

⁶⁸ See ch. 35, § 2.

⁶⁹ See ch. 34, § 4.

⁷⁰ The Nazi Party of Germany is not a totalitarian party within the meaning of § 101(a)(37) of the Act. (BIA, *In the Matter of B.*, 5, I. & N. Dec. 255, May 27, 1953)

An organization is considered to be an "affiliate" of a proscribed association or party if it is related to or identified with the proscribed organization or party in such close association as to evidence an adherence to or a furtherance of its purposes and objectives, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other things of value for any purpose to any proscribed organization or party is presumed to be an "affiliate." (22 CFR 41.91(a)(28)(i) and 42.91(a)(28)(i))

(c) Meaning of membership—Exception for involuntary members. The circumstances under which an alien must be considered a "member of" or "affiliated with" a subversive organization have been the subject of congressional action and interpretation by regulations and the courts. The Act of March 28, 1951,⁷¹ directed the Attorney General to provide by regulations that the terms "members of" and "affiliated with" as used in the Act of October 16, 1918, as amended, the predecessor provision to the present statute, "shall include only membership which is, or was, voluntary, and shall not include membership or affiliation which is, or was, solely (a) when under sixteen years of age, (b) by operation of law or (c) for purposes of obtaining employment, food rations, or other essentials of living where necessary for such purposes."⁷² These provisions have been incorporated into existing law. (Section 212(a)(28)(I)(i))

Service, whether voluntary or not, in the armed forces of any country is not regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization. (22 CFR 41.91(a)(28)(ii) and 42.91(a)(28)(ii))⁷³

However, voluntary service in a political capacity, such as political commissar in the armed forces of any country, constitutes affiliation with the political party or organization in power at the time of the service. (22 CFR 41.91(a)(28)(iii) and 42.91(a)(28)(iii))

The statute, as stated, exempts from the meaning of membership or affiliation one which occurred when the alien was under sixteen years of age. Therefore, if an alien continues

⁷¹ 65 Stat. 28.

⁷² Senate Report No. 1137, 82nd Congress, Second Session, p. 10; House Report No. 1365, 82nd Congress, Second Session, p. 49.

⁷³ See also BIA, *In the Matter of M.*, 4, I. & N. Dec. 336, April 12, 1951.

his membership or affiliation on or after reaching sixteen years of age, only his activities after reaching that age are pertinent to a determination whether the continuation of his membership or affiliation is or was voluntary. (22 CFR 41.91(a)(28)(iv) and 42.91(a)(28)(iv))

Membership or affiliation which occurred "by operation of law" also does not subject an alien to the prohibition of the law. This exemption includes the case of any alien who, without his acquiescence, automatically became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree. (22 CFR 41.91(a)(28)(v) and 42.91(a)(28)(v))

Inasmuch as membership which occurred for purposes of obtaining employment, food rations, or other essentials of living, is not proscribed, membership in a trade union to retain one's profession is not a ground for inadmissibility.⁷⁴

On the other hand, an alien who joined a Communist Party to further his career as an artist and to make other conveniences more readily available to him is considered to have voluntarily acquired membership.⁷⁵

An alien who was or is a member of a totalitarian party, other than a Communist party or organization, which did not or does not advocate the establishment in the United States of a totalitarian dictatorship is not inadmissible unless he advocates the establishment in the United States of a totalitarian dictatorship. (22 CFR 41.9(a)(28)(vi) and 42.91(a)(28)(vi))

Several important Supreme Court decisions have been rendered concerning the meaning of the term "membership" as it is used in the deportation provisions of the statute. Since the meaning of the terms are identical, these decisions are also relevant here.

The Supreme Court, in 1954, held that, in order to be considered a member, "it is enough that the alien joined the Party, aware that he was joining an organization known as the Communist Party which operates as a distinct and active political organization, and that he did so of his own free will." "... Support, or even demonstrated knowledge, of the Communist Party's advocacy of violence was not intended to be a prerequisite to deportation."⁷⁶

⁷⁴ BIA, *In the Matter of A.*, 4, I. & N. Dec. 334, April 11, 1951.

⁷⁵ Attorney General, *In the Matter of B.*, 6, I. & N. Dec. 713, December 7, 1955.

⁷⁶ *Galvan v. Press* (1954) 347 U. S. 522, 98 L. ed. 911, 74 Sup. Ct. 737.

In 1957 the Court, divided five by four, ruled that "there must be a substantial basis for finding that an alien committed himself to the Communist Party in consciousness that he was 'joining an organization known as the Communist Party which operates as a distinct and active political organization' . . ."⁷⁷ In this decision the Court held an alien not to be a member and therefore not deportable who joined the Communist Party during the depression "to fight for something to eat and clothes and shelter . . . not thinking then . . . of overthrowing anything" and who was a salesman in a Communist bookstore "but he did not get a penny there." The minority view found that the economic motives of the alien for joining the Party, which were given weight by the majority, were irrelevant, as was the absence of proof that the petitioner did not believe in the violent overthrow of government.

Subsequent administrative and court decisions stressed that *Rowoldt* did not change the law with respect to the proof necessary to show membership in the Communist Party. In *Rowoldt*, the *Galvan* case was recognized as the controlling authority.⁷⁸ The claim to exemption from deportability under the *Rowoldt* decision was rejected when the alien refused to testify and the uncontradicted testimony showed that the alien was a member of the Communist Party over a period of years.⁷⁹

When an alien joined an affiliate of the Communist Party or a subdivision without having knowledge of the relationship of the affiliate to the Communist Party or its subdivision, membership in the meaning of the immigration laws is not established.⁸⁰ It is recognized that an important distinction exists between the membership in the Communist Party and an affiliate not openly affiliated which justifies different treatment.⁸¹

The interpretation of the term "membership" under the Internal Security Act of 1950 is of significance here. In explaining a clarifying amendment to this Act,⁸² Senator McCarran inserted in the Congressional Record a memorandum discussing earlier judicial and administrative interpretations of membership and affiliation.⁸³ In it he quoted with approval the follow-

⁷⁷ *Rowoldt v. Perfetto* (1957) 355 U. S. 115, 2 L. ed. (2d) 140, 78 Sup. Ct. 180.

⁷⁸ *Grubisich v. Esperdy*, 175 F. Supp. 445 (D.C., S.D., N.Y., 1959).

⁷⁹ BIA, *In the Matter of Z.*, 7, I. & N. Dec. 728, June 12, 1958; and BIA, *In the Matter of H.*, Interim Decision 956, August 28, 1958.

⁸⁰ BIA, *In the Matter of C.*, 6, I. & N. Dec. 20, December 15, 1953; approved by Attorney General, March 14, 1955.

⁸¹ BIA, *In the Matter of C.*, *supra*.

⁸² Act of March 28, 1951, 65 Stat. 28.

⁸³ Congressional Record of March 14, 1951, p. 2373.

ing language from *Colyer v. Skeffington*:⁸⁴ "Congress could not have intended to authorize the wholesale deportation of aliens who, accidentally, artificially, or unconsciously, in appearance only, are found to be members of or affiliated with an organization of whose platform or purposes they have no real knowledge."

In considering the foregoing rulings it should be remembered that whereas in deportation proceedings the Government has the burden to prove the voluntary character of an alien's membership, in visa and exclusion proceedings the burden is on the alien to prove that his membership was involuntary.

(d) **Exception for defectors.** Aliens who were, in the past, voluntary members of, or affiliated with, a proscribed subversive organization may, under certain circumstances, be issued visas and admitted to the United States if they have completely defected.⁸⁵ This action is predicated on a finding by the consular officer at the time of visa issuance, and by the Attorney General at the time of admission, that the alien's membership or affiliation has terminated and that the alien since this termination, for at least five years prior to the date of his application for a visa or for admission, has been actively opposed to the doctrine, program, principles, and ideology of the proscribed party or organization. Furthermore, a finding is required that the admission of the alien into the United States would be in the public interest. The Attorney General is required to make promptly a detailed report to the Congress in the case of each alien who is admitted into the United States as a defector. (Section 212(a)(28)(I)(ii))

The statute does not permit a finding of defectorship in the case of an anarchist. In other words, an alien who once was an anarchist, irrespective of the fact that he has defected and reformed, may never be issued an immigrant visa, and may be issued a nonimmigrant visa only upon the exercise of administrative discretion.⁸⁶

Speeches, writings, or other overt or covert activities are considered evidence of an alien's active opposition to the doctrine, program, principles, and ideology of the party or organization of which he was formerly a member. (22 CFR 41.91(a)(28)(vii) and 42.91(a)(28)(vii))

⁸⁴ 265 Fed. 17, 72 (D.C. Mass., 1920). See also BIA, *In the Matter of B., S., I. & N.* Dec. 72, April 16, 1953; approved by Attorney General, August 19, 1953.

⁸⁵ Senate Report No. 1137, 82nd Congress, Second Session, p. 10; House Report No. 1365, 82nd Congress, Second Session, p. 49.

⁸⁶ See ch. 34, § 4.

Once an alien has been admitted as a defector, his former voluntary membership in a proscribed organization is voided as a bar to the future issuance of a visa or his future admission into the United States. An alien's admission based on a defector finding differs from his admission as a nonimmigrant under a waiver of inadmissibility.⁸⁷ The latter action does not void the alien's inadmissibility but waives it, usually for a single admission, while the defector finding obliterates the former membership as a ground of inadmissibility.

§ 26. Aliens seeking to enter to engage in prejudicial activities.

(a) **Definition.** Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if the consular officer or the Attorney General knows or has reason to believe that they seek to enter the United States solely, principally, or incidentally, to engage in activities which would:

- (1) be prejudicial to the public interest, or
- (2) endanger the welfare, safety, or security of the United States. (Section 212(a) (27))⁸⁸

(b) **Scope.** The legislative history of this provision shows that it incorporates in substance the comparable provisions of the Act of October 16, 1918,⁸⁹ as amended by Section 22 of the Subversive Activities Control Act of 1950, also referred to as the Internal Security Act of 1950.⁹⁰ The purpose, plans, intentions or designs of an alien to engage, after arrival in the United States, in the proscribed activities are the deciding factors in determining whether the prohibition of Section 212(a) (27) applies in an individual case.⁹¹ The unpopularity in the United States of the views advocated by an alien seeking admission would, in itself, apparently not be a test as to whether admission of that person would be prejudicial to the public interest.⁹²

⁸⁷ See ch. 34, § 4.

⁸⁸ For text see Appendix A.

⁸⁹ 40 Stat. 1012; see ch. 1, § 10.

⁹⁰ 64 Stat. 987; see ch. 1, § 13 (h).

⁹¹ This view was stressed in previous visa regulations; see 22 CFR 42.42(i)(1), 1954 Supplement; revoked 19 Fed. Reg. 3505, June 16, 1954.

⁹² BIA, *In the Matter of M.*, 5, I. & N. Dec. 248, May 27, 1953. As a result of this conclusion, the Board reached the decision that an individual who actively professes pacifism and who advocates all opposition "legally" possible to conscription laws and who desires to enter the United States for a temporary period of two months to lecture and take part in discussion groups on the subject of pacifism is not inadmissible to the United States under § 212(a)(27).

Aliens in this category, whether seeking admission as immigrants or nonimmigrants, are absolutely barred from the United States.

§ 27. Aliens likely to endanger public safety through subversive activities.

(a) **Definition.** Immigrants and nonimmigrants are ineligible to receive visas and excludable from admission into the United States if the consular officer or the Attorney General knows or has reasonable ground to believe that they probably would, after entry:

(1) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activities subversive to the national security;

(2) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unconstitutional means; or

(3) join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under Section 7 of the Subversive Activities Control Act of 1950. (Section 212(a)(29))⁹³

(b) **Scope.** The legislative history of this provision is identical with that of Section 212(a)(27).⁹⁴ Different from an alien's ineligibility under Section 212(a)(27), which is based on his sole, principal or incidental intent in seeking to enter the United States, ineligibility under Section 212(a)(29) is based on the alien's past activities which indicate that he would engage in the activities proscribed by this provision.

Aliens in this category, whether seeking admission as immigrants or nonimmigrants, are absolutely barred from the United States.

⁹³ For text see Appendix A.

Section 7 of the Subversive Activities Control Act of 1950 (64 Stat. 993) provides:

"(a) Each Communist-action organization (including any organization required, by a final order of the Board, to register as a Communist-action organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-action organization.

"(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization."

⁹⁴ See § 26(b), *supra*.

§ 28. Former exchange visitors.

(a) **Temporary disqualification.** An alien who was admitted into the United States subsequent to June 4, 1956, as an exchange visitor,⁹⁵ or who otherwise acquired the status of an exchange visitor subsequent to June 4, 1956, including any alien granted an extension of the period of his temporary admission subsequent to September 20, 1956, is ineligible to receive an immigrant visa or a nonimmigrant visa as a temporary worker, or for adjustment of status to that of an alien lawfully admitted for permanent residence, unless:

(1) he has resided and been physically present abroad in a country or countries cooperating in the exchange visitor program for an aggregate of at least two years since his departure from the United States following the termination of his exchange visitor status, or

(2) the foreign residence requirement has been waived by the Attorney General. The Attorney General may waive this temporary ineligibility of exchange visitors only upon request of an interested Government agency and upon the recommendation of the Secretary of State and if he finds that the admission of the alien to the United States would be in the public interest. (Act of June 4, 1956, 70 Stat. 240,⁹⁶ and 22 CFR 41.91(d) and 42.91(c))

(b) **Waiver of foreign-residence requirement.** An exchange visitor desiring to apply for a waiver is required to follow procedures and regulations established by the Government agency interested in his case.

An applicant for a waiver should arrange for a separate report on his application to be made by the sponsor or sponsors directly to the interested Government agency and to the Secretary of State.

A request for waiver submitted by an agency of the United States Government to the Secretary for his recommendation must recite the facts concerning the country of origin and the admission and stay in the United States of the exchange visitor or former exchange visitor; identify his sponsor or sponsors

⁹⁵ See ch. 23, § 10.

⁹⁶ While the language of this act states that its provisions "shall apply only to those persons acquiring exchange-visitor status subsequent to the date of the enactment thereof," the committee reports point out that this language is not intended to preclude application of the two-year absence requirement to any exchange visitor who, subsequent to such date, may apply for an extension of the period of time for which he was admitted. (House Report No. 2110, 84th Congress, Second Session, p. 2, and Senate Report No. 1608, 84th Congress, Second Session, p. 4) Visa regulations implementing the act took cognizance of the Congressional intent expressed in the committee reports.

by name and program number; name the place of his intended residence in the United States; and state the reason or reasons why the waiver is being requested.

The request must be supported by documentary evidence demonstrating that admission of the exchange visitor for permanent resident status is in the public interest because the two-year period of residence abroad would:

(1) impose undue hardship upon an exchange visitor who is the spouse of a United States citizen or of a lawfully resident alien that he could not have anticipated at the time he acquired exchange visitor status or when he accepted the last extension of stay as an exchange visitor, or

(2) be clearly detrimental to a program or activity of official interest to an agency of the Government of the United States.

An exchange visitor who wishes to apply for a waiver under the conditions described under (1) above may apply to the district director of the Immigration and Naturalization Service having administrative jurisdiction over his intended place of residence in the United States or, if he is abroad, to an American consular officer. If the Immigration and Naturalization Service views the application favorably it will transmit it to the Department of State for a recommendation by the Secretary of State. An application received by an American consular officer will also be forwarded to the Department of State for consideration and recommendation by the Secretary of State. An exchange visitor who wishes to apply for a waiver under the conditions described under (2) above may apply to the agency interested in his case. If the interested agency views his case favorably it will transmit the request for the waiver to the Department of State for a recommendation by the Secretary of State.

Upon receipt of the request for a waiver the Secretary of State will review the policy, program, and foreign relations aspect of the case and in appropriate cases will transmit his recommendations to the Attorney General for the latter's decision and consequent action. (22 CFR 63.6 and 63.7)

§ 29. Aliens immediately deportable upon entry.—Although there are no specific statutory grounds of inadmissibility in the case of an alien who, although not inadmissible under Section 212(a) would, upon entry, immediately become deportable, long-standing administrative practice has been to exclude such an alien from admission. This practice led to the exclusion of aliens who have failed to comply with Section 265 requiring

certain address reports of aliens in the United States;⁹⁷ and of aliens convicted for conspiracy and violation of the Foreign Agents Registration Act.⁹⁸

Immigrants as well as nonimmigrants fall within the class of aliens described in this section. A nonimmigrant may be admitted upon the exercise of administrative discretion.⁹⁹

§ 30. Aliens unable to establish nonimmigrant status.—The statute establishes a presumption that every alien is to be considered an immigrant until he shows to the satisfaction of the consular officer at the time of application for a visa, and the immigration officers at the time of application for admission, that he is entitled to a nonimmigrant status.¹ Consequently, a visa may not be issued to an applicant for a nonimmigrant visa unless the consular officer is satisfied that the alien's case falls within one of the nonimmigrant categories established by the Immigration and Nationality Act or otherwise established by law or treaty.² (22 CFR 41.91(b))

If an alien is unable to establish his bona fide nonimmigrant status the consular officer ordinarily will refuse the visa on this ground without determining whether the alien meets the qualitative standards of the immigration laws.

§ 31. Failure of visa application to comply with law or regulations.—The statute enjoins the consular officer from issuing a visa not only for the qualitative grounds described earlier in this chapter but also for the procedural ground that the alien's visa application fails to comply with the provisions of law or regulations.³ A visa application is considered defective if:

- (1) the applicant fails to furnish the information required to be included in the application;
- (2) the application contains a false or incorrect statement which does not constitute a ground of ineligibility under Section 212(a) (9) or (19);⁴
- (3) the application is not supported by the required documents;

⁹⁷ BIA, *In the Matter of S.*, 7, I. & N. Dec. 536, August 19, 1957.

⁹⁸ Assistant Commissioner, *In the Matter of O.*, Interim Decision 992, March 19, 1959; approved by BIA, April 2, 1959.

⁹⁹ See ch. 34, § 4(a).

¹ See ch. 17, § 3(a).

² See chs. 18 through 28.

³ See ch. 36, § 1.

⁴ See § 16, *supra*.

(4) the applicant refuses to be fingerprinted if required by law or regulations;

(5) the fee for the application or the issuance of the visa, if required, is not paid;

(6) the alien fails to swear to, or affirm, the application before a consular officer if required to do so;

(7) the visa application otherwise fails to meet the specific requirements of the law for reasons for which the applicant is responsible. (22 CFR 41.91(c) (1) and 42.91(b) (1))

The grounds of refusal described above under (1) through (6) do not constitute a bar to the reconsideration of the application when the applicant complies with the statutory or regulatory requirements or to the consideration of a new visa application submitted by the same applicant. (22 CFR 41.91(c) (2) and 42.91(b) (2))

§ 32. Executive restriction and suspension of entry and departure of aliens.—Under the conditions described below the statute gives the President authority to impose by proclamation restrictions on the admission of aliens into, and their departure from the United States. (Sections 212(e) and 215)

(a) **Entry and departure control during war or national emergency.** When the United States is at war or during the existence of a national emergency proclaimed by the President, and whenever a state of war exists between two or more states, the President may by proclamation prohibit the entry into and the departure from the United States of any alien if he finds that the interests of the United States require such action. Under the same authority the President may prescribe restrictions on the entry and departure of aliens, in addition to those provided for in the immigration laws. (Section 215)⁵

The provisions of this section are operative as a result of Presidential Proclamation 3004 of January 17, 1953, declaring a state of national emergency and delegating to the Secretary of State the authority to control the entry and departure of aliens.⁶

⁵ Prior to the enactment of the Immigration and Nationality Act, similar authority was contained in the Act of May 22, 1918 (40 Stat. 559) and the Act of June 21, 1941 (55 Stat. 252). The constitutionality of restrictions based on this authority was upheld by the Supreme Court in *U. S. ex rel. Knauff v. Shaughnessy* (1950) 338 U. S. 537, 94 L. ed. 317, 70 Sup. Ct. 309, and in *Shaughnessy v. U. S. ex rel. Mezei* (1953) 345 U. S. 206, 97 L. ed. 956, 73 Sup. Ct. 625.

⁶ 18 Fed. Reg. 489. An earlier proclamation declaring a national emergency during the Korean conflict is still effective. (Presidential Proclamation 2914 of December 16, 1950, 15 Fed. Reg. 9029). See also § 20(b) *supra*.

(1) **Departure control.** Regulations prescribed by the Secretary of State with the concurrence of the Attorney General under authority delegated by the President define the classes of aliens whose departure is deemed prejudicial to the interests of the United States. (22 CFR 46)

(i) **Aliens whose departure is deemed prejudicial.** The following classes are included in the definition of aliens whose departure is deemed prejudicial to the interests of the United States:

(aa) aliens lawfully admitted for permanent residence who seek to depart from the United States for travel to, in, or through Albania, Communist-controlled China ("Chinese Peoples Republic"), North Korea ("Democratic Peoples Republic of Korea") or North Viet-Nam ("Democratic Republic of Viet-Nam");

(bb) aliens lawfully admitted for permanent residence who seek to depart from the United States for travel to, in, or through Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), the Union of Soviet Socialist Republics, or Yugoslavia, unless such aliens possess a valid, unexpired reentry permit, as described in Chapter 44, which was issued after December 1, 1960;⁷

(cc) any other aliens who are likely to disclose national defense and security information; who are likely to organize a rebellion against the United States or a country allied with it; who are fugitives from justice or military service in the United States; who are witnesses in criminal investigations or court proceedings or legislative inquiries; and aliens whose technical or scientific knowledge might be utilized by an enemy or potential enemy of the United States. (22 CFR 46.3)

(ii) **Authority of departure-control officer.** Departure control ordinarily is exercised by immigration officers. A departure-control officer exercises his authority by serving an alien whose departure is deemed prejudicial to the interests of the United States with a written temporary order directing him not to depart.

(iii) **Hearing and decision.** Unless the alien served with the order requests a hearing within fifteen days it becomes final. Hearings are conducted before a special inquiry officer. Based on the recommendation of the special inquiry officer the regional

⁷ These restrictions do not apply to aliens who were outside of the United States on December 1, 1960, in possession of Form I-151. (Department of State Press Release No. 664, December 1, 1960)

commissioner renders a decision which is not subject to administrative appeal. (22 CFR 46.2, 46.4 and 46.5)

(iv) **Authority of the Secretary of State.** If the Secretary of State specifically requests the Attorney General to prevent the departure of a particular alien or a group of aliens, the Attorney General may not permit the departure until he has consulted with the Secretary of State. Also, the Secretary of State, after consultation with the Attorney General, may permit the departure of an individual alien or a group of aliens if he determines that this action is in the national interest. (22 CFR 46.5 (e)) The decision of the Secretary of State is controlling in the case of foreign government officials, international organization aliens and certain aliens in transit to the United Nations Headquarters District. (22 CFR 46.7)

(2) **Entry control.** At present no controls of the entry of aliens under the authority of the Presidential Proclamation are in effect.⁸

(3) **Penalties.** Any person who willfully violates any entry or departure control provisions described above under (1) and (2) may be fined not more than \$5,000 or imprisoned for not more than five years, or both. (Section 215(c))

(b) **Entry control in the interests of the United States.** Independent of the existence of war or a national emergency the President has statutory authority to suspend the entry of all aliens or any class of aliens, or to impose on the entry of aliens any restrictions he may deem appropriate. The President may exercise this authority by proclamation if he finds that the entry of any aliens or any class of aliens would be detrimental to the interests of the United States. (Section 212(e))⁹

⁸ The control of the entry of aliens into the Canal Zone and into Samoa, originally prescribed under the authority of Proclamation 3004, was revoked on February 10, 1956 and November 14, 1957, respectively. (21 Fed. Reg. 938 and 22 Fed. Reg. 9053)

⁹ For text see Appendix A.

CHAPTER 34

ADMISSION OF OTHERWISE INADMISSIBLE ALIENS

SECTION.

1. Authority to admit otherwise inadmissible aliens—Background and summary.
2. Admission of otherwise inadmissible returning resident aliens.
 - (a) Rule.
 - (b) Procedure.
 - (c) Scope.
3. Admission of otherwise inadmissible immigrants in hardship cases.
 - (a) Waiver of criminal and immoral grounds.
 - (1) Conditions.
 - (2) Procedure.
 - (b) Waiver of fraud and misrepresentation.
 - (1) Conditions.
 - (2) Procedure.
 - (c) Waiver of affliction with tuberculosis.
 - (1) Conditions.
 - (2) Procedure.
 - (d) Scope of waiver—Administrative decisions.
4. Authority to admit otherwise inadmissible nonimmigrants.
 - (a) Rule and background.
 - (b) Procedure.
 - (1) Procedure in connection with visa application.
 - (2) Procedure after visa issuance or when visa not required.
 - (c) Scope of waiver.

§ 1. **Authority to admit otherwise inadmissible aliens—Background and summary.**—In the case of nonimmigrants, certain immigrants and returning permanent resident aliens, the Attorney General is vested by law with discretionary authority to waive some of the grounds which otherwise would render these aliens ineligible to receive visas and excludable from admission into the United States.

The thinking of the Senate and House Judiciary Committees in formulating this authority at the time of the enactment of the Immigration and Nationality Act in 1952 is reflected in the following statement contained in identical language in the reports of both committees:

“Having concluded that failure by an alien to meet the strict qualitative tests will disqualify him from admission to the United States, the committee is of the opinion that any discretionary authority to waive the grounds should be carefully restricted to those cases where extenuating circumstances clearly require such action and that the discretionary authority should be surrounded with strict limitations.”¹

¹ House Report No. 1365, 82nd Congress, Second Session, p. 51, and Senate Report No. 1137, 82nd Congress, Second Session, pp. 11, 12.

In 1957 the Congress broadened significantly existing administrative authority for the admission of otherwise ineligible aliens when it authorized the Attorney General to waive, in his discretion, certain grounds of inadmissibility in the case of spouses, children, and parents of United States citizens and of aliens lawfully admitted for permanent residence. The House Judiciary Committee then stated that a great number of private bills relieving aliens from these disqualifications had been passed by the Congress during the past few years. The Committee made the following additional observations:

"It appears to the committee that it is unfair and improper to extend the benefit of legislative relief solely to a few selected individuals who are in a position to reach the Congress for redress of their grievances. It is felt that the humanitarian approach should be extended to an entire defined class of aliens rather than to selected individuals. The relief clause affecting the latter category of immigrants seeking admission is not a mandatory one, and it is expected that the Attorney General will exercise the discretion vested in him by virtue of the amendment by weighing carefully the equities and the hardships involved."²

The authority of the Attorney General to waive certain grounds of inadmissibility is discussed below separately for returning permanent resident aliens, immigrants in hardship cases, and nonimmigrants.³

The discretionary authority of the Attorney General to waive grounds of inadmissibility is to be differentiated from the statutory exemption, without the injection of discretionary considerations, of certain aliens from specified grounds of inadmissibility. Examples of these statutory exemptions are those making the literacy requirement inapplicable to nonimmigrants and certain classes of immigrants,⁴ those contained in the Act of September 3, 1954 making the provisions of Section 212(a)(9) inapplicable to certain petty offenders⁵ and those of the War Brides Act of 1954 waiving for the benefit of spouses and children of war veterans the physical and mental disabilities which would otherwise bar their admission.⁶

§ 2. Admission of otherwise inadmissible returning resident aliens.

(a) **Rule.** An alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not

² House Report No. 1199, 85th Congress, First Session, p. 11.

³ The discretionary authority of the Attorney General to admit an immigrant who is inadmissible because he is not properly charged to the quota specified in the immigrant visa, or because he is not a nonquota immigrant, although holding a nonquota immigrant visa, is discussed in ch. 33, § 17(b).

⁴ See ch. 33, § 23.

⁵ See ch. 33, § 5(i).

⁶ See ch. 33, § 2(a).

under an order of deportation, and who is returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted to the United States in the discretion of the Attorney General regardless of the fact that he may be inadmissible, unless he is inadmissible as a member of a subversive organization or as an alien who would engage in activities subversive to the national security or whose entry would be prejudicial to the public interest.⁷ (Section 212(c)) Also, an alien lawfully admitted for permanent residence regardless of the period of his earlier domicile in the United States who departs temporarily may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation. (Section 211(b))

(b) Procedure. An alien who has been lawfully admitted for permanent residence and who is or believes himself to be inadmissible to the United States, except as a member of one of the subversive classes described above, may before or after his temporary departure from the United States and before his application for readmission to the United States apply for permission to reenter under the discretionary authority vested in the Attorney General, notwithstanding any such ground of inadmissibility. The applicant is required to submit his application on Form I-191. If the applicant is mentally incompetent, the application may be executed by his parent or guardian. If the applicant is not in the United States, the application is to be executed before a consular officer.

Application Form I-191 is to be filed with the district director or the officer in charge of the Immigration and Naturalization Service having administrative jurisdiction over the applicant's intended or actual place of residence in the United States. Upon an investigation the decision on the application is made by the district director who will give written notice of his decision to the applicant. If the application is denied, the applicant is advised of the reasons for the denial and of his right to appeal to the Board of Immigration Appeals within fifteen days after the mailing of the notification of the decision.

If the application is granted, the district director or the Board of Immigration Appeals may provide for terms and conditions, including the exaction of a bond. (8 CFR 212.3)

(c) Scope. Under the Attorney General's authority described in this section it is possible for an alien lawfully admitted into the United States who departed from the United

⁷ See ch. 33, §§ 25, 26 and 27.

States to be readmitted regardless of the fact that he may have developed before or after his departure from the United States a mental or physical defect which would otherwise make him inadmissible. Likewise, an alien may be readmitted if he has become inadmissible for any of the other reasons except the ones based on membership in proscribed organizations or other security grounds; for example, if he was convicted for a crime involving moral turpitude while in the United States and before his departure from the United States.

The scope and effect of the discretionary authority vested in the Attorney General to waive the qualitative ineligibility of a returning resident alien under Section 212(c) has been delineated by a series of administrative decisions. The more important of these decisions are described below.

In order to qualify for relief the alien must establish that he has had, or will be returning to, an unrelinquished domicile in the United States of at least seven consecutive years following his lawful admission for permanent residence. An alien who acquired a lawful permanent residence in 1949 although having had residence in the United States continuously since 1941, therefore was not found qualified for relief in 1953 since he would not have been returning to a lawful unrelinquished domicile of seven consecutive years.⁸

An applicant for discretionary relief under Section 212(c) is not statutorily required to make a showing of good moral character in establishing his eligibility. However, the provisions of Section 101(f)⁹ defining the term "good moral character" are taken into consideration by the Immigration and Naturalization Service when determining whether an applicant is worthy of relief.¹⁰

The application for advance waiver of inadmissibility under Section 212(c) is not appropriate in the case of an alien abroad since 1933 who is seeking to return to the United States in 1954. A claim to unrelinquished domicile in the United States in such case should be submitted to an American consular of-

⁸ BIA, *In the Matter of S.*, 5, I. & N. Dec. 116, February 12, 1953. Before the enactment of the Immigration and Nationality Act, the Attorney General, under the Seventh Proviso of § 3 of the Immigration Act of 1917, exercised authority to waive the grounds of exclusion in the case of an alien returning under the specified circumstances even though he had not been previously lawfully admitted to the United States. For a fuller discussion of this practice and its critical evaluation, see Senate Report 1515, 81st Congress, Second Session, *The Immigration and Naturalization Systems of the United States*, pp. 382 to 384.

⁹ See ch. 5, § 3(d).

¹⁰ BIA, *In the Matter of N.*, 7, I. & N. Dec. 368, December 10, 1956; see also BIA, *In the Matter of G.Y.G.*, 4, I. & N. Dec. 211, December 22, 1950.

ficer abroad for consideration as to the issuance of a visa as a returning resident alien.¹¹

The scope of Section 212(c) has been significantly broadened by the ruling that the discretionary authority contained therein may be exercised *nunc pro tunc* in deportation proceedings to waive a ground of inadmissibility existing at the time of admission and thereby removing the ground of deportation and making possible termination of deportation proceedings.¹² The discretionary authority contained in Section 212(c) has also been used *nunc pro tunc* in naturalization proceedings in the case of an alien admitted to the United States for permanent residence in 1923 whose application for naturalization brought to light the fact that she had suffered an attack of insanity prior to her last admission to the United States in 1948 after a visit of a few hours in Canada.¹³

§ 3. Admission of otherwise inadmissible immigrants in hardship cases.—The Act of September 11, 1957¹⁴ vests discretionary authority in the Attorney General to authorize the admission of spouses, children and parents of United States citizens and of aliens lawfully admitted for permanent residence, in spite of their inadmissibility for reasons stated below.

(a) Waiver of criminal and immoral grounds.

(1) Conditions. An alien found ineligible to receive an immigrant visa by a consular officer under the provisions of paragraphs (9), (10), or (12) of Section 212(a) relating to criminal aliens, prostitutes, and procurers¹⁵ may be issued a visa and admitted to the United States under the following conditions:

(i) the applicant must be the parent, husband, wife, or child of a United States citizen or of an alien lawfully admitted for permanent residence (the term "child" includes here a minor unmarried adopted child, irrespective of the child's age at the time of adoption);

(ii) it must have been established to the satisfaction of the Attorney General that the alien's exclusion would result in extreme hardship to the United States citizen or permanent resident alien spouse, parent, son, or daughter of such alien;

¹¹ BIA, *In the Matter of Y.S.*, 5, I. & N. Dec. 658, January 28, 1954.

¹² BIA, *In the Matter of M.*, 5, I. & N. Dec. 598, January 4, 1954. For a fuller discussion of the effect of this interpretation see ch. 45, § 2(d)(3).

¹³ Regional Commissioner, *In the Matter of A.*, 7, I. & N. Dec. 327, September 19, 1956.

¹⁴ 71 Stat. 639.

¹⁵ See ch. 33, §§ 5, 9.

(iii) it must have been established to the satisfaction of the Attorney General that the admission of the applicant into the United States would not be contrary to the national welfare, safety, or security of the United States; and

(iv) the Attorney General, in his discretion, must have consented to the alien's applying or reapplying for a visa and for admission to the United States. (Section 5, Act of September 11, 1957)¹⁶

(2) Procedure. An application for a waiver of criminal or immoral grounds must be filed on Form I-601, "Application for Waiver of Grounds of Excludability," at the consular office considering the application for a visa for transmission to the Immigration and Naturalization Service. A decision denying the application may be appealed to the Regional Commissioner within fifteen days after its mailing. (8 CFR 103.3)

(b) Waiver of fraud and misrepresentation.

(1) Conditions. An alien found ineligible to receive an immigrant visa because he seeks, has sought to procure, or has procured a visa or other documentation, or entry into the United States, by fraud or misrepresentation,¹⁷ or because he admits the commission of perjury in connection therewith,¹⁸ may be issued a visa and admitted to the United States under the following conditions:

(i) the applicant must be the parent, husband, wife, or child of a United States citizen or of an alien lawfully admitted for permanent residence (the term "child" is limited to its definition under the Immigration and Nationality Act and, different from (a) above, includes an adopted child only if the adoption took place while the child was under the age of fourteen years and has thereafter been in the legal custody of, and has resided with, the adoptive parent or parents for at least two years);

(ii) the Attorney General, in his discretion, has consented to the alien's applying or reapplying for a visa and

¹⁶ 71 Stat. 640. Mere separation from citizen spouse does not establish "extreme hardship" within the meaning of § 5 where there are no children of the marriage (which occurred after comparatively brief acquaintance of the parties) and alien's wife is not dependent upon him for support.

Denial of § 5 application is also warranted as a matter of discretion where applicant was convicted as recently as 1959 of second degree burglary and grand larceny, has on unsatisfactory employment record, and obtained his visa without disclosing his criminal record. (BIA, *In the Matter of W.*, Interim Decision 1088, July 5, 1960)

¹⁷ Section 212(a)(19), see ch. 33, § 16.

¹⁸ Section 212(a)(9), see ch. 33, § 5.

for admission into the United States. (Section 7, Act of September 11, 1957)¹⁹

(2) **Procedure.** An application for a waiver of fraud or misrepresentation must be filed on Form I-601, "Application for Waiver of Grounds of Excludability," at the consular office considering the application for a visa for transmission to the Immigration and Naturalization Service. A decision denying the application may be appealed to the Regional Commissioner within fifteen days after its mailing. (8 CFR 103.3)

Different from the waiver described under (a) above, relative to criminal aliens, prostitutes and procurers, the statute does not establish the necessity of a finding of extreme hardship as described under (a)(1)(ii) above, or a finding that the alien's admission would not be contrary to the national welfare, safety, or security of the United States as described under (a)(1)(iii) above. However, the Attorney General may establish such requirements based on his inherent discretionary authority.

(c) **Waiver of affliction with tuberculosis.**

(1) **Conditions.** An alien found ineligible to receive an immigrant visa under the provisions of Section 212(a)(6) as far as they relate to aliens afflicted with tuberculosis²⁰ may be issued a visa on or before June 30, 1961 and admitted to the United States under the following conditions:

(i) the applicant must be (a) the husband, wife, child or parent of an alien who has been issued an immigrant visa; or (b) the husband, wife, child, or parent of a United States citizen or of an alien lawfully admitted for permanent residence (the term "child" includes here a minor unmarried adopted child, irrespective of the child's age at the time of adoption);

(ii) the applicant must have met such terms, conditions and controls, including the giving of a bond, as the Attorney General in his discretion, after consultation with the Surgeon General of the United States Public Health Service, may by regulations prescribe. (Section 6, Act of September 11, 1957, as amended)²¹

¹⁹ 71 Stat. 640.

²⁰ See ch. 33, § 2(g).

²¹ 71 Stat. 640, as amended by the Act of September 9, 1959, 73 Stat. 490. The Act of September 9, 1959 extended the provision, of this section from June 30, 1959 to June 30, 1961, and also broadened its application to include spouses, children and parents of aliens who have been issued immigrant visas.

(2) **Procedure.** An application for a waiver of affliction with tuberculosis must be filed on Form I-601, "Application for Waiver of Grounds of Excludability," at the consular office considering the application for a visa. (8 CFR 212.7(b)) Immigration regulations require that the alien submit the following evidence at the time of filing his application:

"(1) A statement from a State, territorial, or local health officer, or from the director or a physician staff member of a hospital recognized by the United States Public Health Service as an institution for the treatment of tuberculosis, agreeing (i) to supply any treatment and observation required for proper management of the alien's condition, in conformity with accepted standards of medical practice, and (ii) to submit to the United States Quarantine Station, Staten Island, New York, a clinical evaluation of the alien, including necessary X-ray films, and a report of final disposition of the case. In each case the statement of agreement regarding these services shall specify the name and address of the hospital where the services will be provided and shall state that the alien will be given care on an inpatient or outpatient basis when necessary after his arrival at such hospital.

"(2) An affidavit from a sponsor or other responsible individual that financial arrangements for the alien's care have been made with the hospital. This affidavit is not required of an alien who establishes eligibility under the Dependents Medical Care Act of June 7, 1956.²²

"(3) Assurance that upon admission into the United States he will go direct to the specified hospital; will submit to such examinations, treatment, isolation, and medical regime as may be required; and will remain under the prescribed treatment or observation, whether on an inpatient or outpatient basis, until discharged.

"(4) Assurance that he will comply with the provisions of 'Sanitary Measures for Travel of Aliens with Tuberculosis,' a copy of which is to be furnished to him." (8 CFR 212.7 (b))

(d) **Scope of waiver—Administrative decisions.** A waiver of inadmissibility based on criminal and immoral grounds, fraud and misrepresentation, or affliction with tuberculosis as described under (a), (b) and (c) above, remains in full force and effect as to any subsequent entries by the alien if no new grounds of inadmissibility have arisen and the alien is complying with the conditions imposed by the waiver.²³ Inadmissibility based on criminal and immoral grounds or on fraud and misrepresentation, as described under (a) and (b) above, may be waived concurrently with a waiver of the visa requirement under Section 211(b)²⁴ to authorize the admission of a returning resident alien.²⁵

²² 70 Stat. 250, 37 U.S.C. 401, F.C.A. 37 § 401.

²³ Assistant Commissioner, *In the Matter of P.*, Interim Decision 938, July 24, 1958.

²⁴ See ch. 33, § 17(b).

²⁵ BIA, *In the Matter of G.*, Interim Decision 972, January 21, 1959.

Whether the Board of Immigration Appeals has authority to waive in exclusion proceedings, under Sections 5 and 7 of the Act of September 11, 1957, criminal and immoral grounds of inadmissibility, is not established. The Attorney General ruled that the Board may not grant in exclusion proceedings an advance waiver of inadmissibility under these sections to facilitate the future admission of aliens ordered excluded.²⁶ Consistent with this ruling, the Board held that an alien's inadmissibility may not be waived under Sections 5 and 7 in exclusion proceedings to correct immigrant visas issued before September 11, 1957.²⁷

§ 4. Authority to admit otherwise inadmissible nonimmigrants.

(a) **Rule and background.** A nonimmigrant, except one whose entry would be prejudicial to the public interest or who would engage in activities subversive to the national security, may, regardless of the fact that he is otherwise inadmissible, be issued a visa if the Attorney General has approved a recommendation to that effect by the consular officer or the Secretary of State. If the alien is applying for admission at a port of entry of the United States, the Attorney General may admit him without a recommendation of the Secretary of State or a consular officer. (Section 212(d)(3))

The Attorney General's discretionary authority to waive the ineligibility of an otherwise inadmissible nonimmigrant may be exercised only if the alien's bona fides as a nonimmigrant has been established.²⁸

In vesting discretionary authority in the Attorney General for the admission of inadmissible nonimmigrants, the Congress followed the pattern set by the Immigration Act of 1917 in recognition "that cases will continue to arise where there are extenuating circumstances which justify the temporary admission of otherwise inadmissible aliens, both for humane reasons and for reasons of public interest."²⁹

²⁶ Attorney General, *In the Matter of De G.*, Interim Decision 1036, December 14, 1959; see also Attorney General, *In the Matter of De F.*, Interim Decision 978, February 26, 1959.

²⁷ BIA, *In the Matter of V.D.B.*, Interim Decision 1061, March 11, 1960. For earlier ruling of the Board see *In the Matter of G.*, Interim Decision 972, January 21, 1959. For a discussion of the retroactive application of §§ 5, 7 in deportation proceedings see ch. 45, § 2(d)(4).

²⁸ Therefore, an application under § 212(d)(3) for a waiver of an alien's inadmissibility because he was previously deported has to be denied if the alien's past record—deportation as an overstayed crewman and attempt to enter as a stowaway—indicates that he is not a bona fide nonimmigrant. (Regional Commissioner, *In the Matter of C.G.*, Interim Decision 1037, November 17, 1959; approved by Assistant Commissioner)

²⁹ House Report No. 1365, 82nd Congress, Second Session, p. 51, and Senate Report No. 1137, 82nd Congress, Second Session, p. 12. The equivalent provision of the Im-

(b) **Procedure.** The procedure to be followed in connection with the temporary admission of ineligible nonimmigrants differs depending on whether the waiver of inadmissibility is applied for in connection with a visa application or in cases in which a visa has already been issued or a visa is not required.

(1) **Procedure in connection with visa application.** If a consular officer determines that an alien who has applied for a nonimmigrant visa is ineligible to receive it for a reason which can be waived by the Attorney General, a recommendation by the consular officer or the Secretary of State is required before the waiver may be considered by the Attorney General. (Section 212(d) (3) (A))

(i) **Favorable recommendation by consular officer.** The consular officer may, upon his own initiative, submit a report to the Department of State recommending that the Attorney General waive a specific ground of ineligibility. The consular officer will take this action in consideration of the equities involved in the particular case. In certain categories of cases consular officers may recommend directly to designated immigration officers that an alien's temporary admission be authorized in spite of his ineligibility to receive a visa. (22 CFR 41.95(a))

(ii) **Recommendation by Secretary of State.** Visa regulations require that, upon the request of the Secretary of State or of the alien, the consular officer submit a report to the Department of State in the case of an applicant who has been found ineligible for a nonimmigrant visa. (22 CFR 41.95(a)) This course of action is likely to occur if the consular officer fails to submit a recommendation on his own initiative as described under (i) above. The Secretary of State will then decide whether he should recommend to the Attorney General the waiver of the alien's ineligibility.

(iii) **Form and fee; Finality of decision.** No formal application form or fee is required in connection with the action described under (i) and (ii) above, irrespective of whether it is taken at the initiative of the consular officer, the Secretary of State, or at the request of the alien. The refusal by the Secretary of State to recommend a waiver or by the Attorney General to grant it does not preclude a renewal of the request for the waiver.

migration Act of 1917 gave the Attorney General authority to waive grounds of inadmissibility in the case of nonimmigrants independent of any recommendation by the Secretary of State or a consular officer.

(iv) **Grant of waiver.** When the Attorney General authorizes the temporary admission of an ineligible nonimmigrant, and the consular officer is so informed, a visa may be issued subject to the conditions imposed by the Attorney General.

(2) **Procedure after visa issuance or when visa not required.**

(i) **Form and fee.** When the inadmissibility of a nonimmigrant becomes apparent after a visa has been issued, or if a visa is not required, the alien has to submit his application for the waiver on Form I-192, "Application for Advance Permission to enter as Nonimmigrant," to the district director in charge of the applicant's intended port of entry. In such case a recommendation by the Secretary of State or the consular officer is not called for. (Section 212(d) (3) (B)) If the application is made at the time of the alien's arrival at a port of entry he must establish that he was not aware of the ground of inadmissibility and that he could not have ascertained it by the exercise of reasonable diligence.

A fee of \$25 has to be submitted with the application. In emergency cases or where the granting of the application is in the interest of the United States Government, the fee may be waived. (8 CFR 212.4 and 103.7(c))

(ii) **Evidence.** In submitting Form I-192 the applicant must attach evidence bearing on the merits of his case. For example, if he is inadmissible due to disease, mental or physical defect or disability he must establish that satisfactory treatment cannot be obtained outside the United States, that arrangements for treatment, including financial arrangements for payment of expenses, have been made and that a bond will be available if required. If the alien is inadmissible as a result of present or past membership in a proscribed organization or because of his conviction of crime, details about his membership, activities, conviction and sentence must be submitted. (Form I-192, Instructions)

(iii) **Decision and appeal.** The district director may approve or deny the alien's application. If it is denied, the applicant may appeal the decision to the Board of Immigration Appeals within fifteen days after the mailing of the notification of the decision. The fact that the denial was made in connection with an application submitted in advance of the alien's arrival at a port of entry does not preclude the renewal of the application in exclusion proceedings, described in Chapter 37, at the time the alien arrives at a port of entry. (8 CFR 212.4)

(c) **Scope of waiver.** Ordinarily, a waiver granted by the Attorney General is valid only for one entry and has to be renewed if the alien contemplates subsequent entries.³⁰ An alien immediately deportable upon entry, and therefore held inadmissible based on administrative practice,³¹ may benefit from the discretionary authority contained in Section 212(d)(3), since the only statutory limitation to this authority applies to aliens whose entry would be prejudicial to the public interest or who would engage in activities subversive to the national security.³²

As in the case of other discretionary authority statutorily provided in connection with the admission of aliens, the Board of Immigration Appeals has broadened the scope of the authority contained in Section 212(d)(3) by permitting its application *nunc pro tunc* in deportation proceedings.³³

³⁰ This limitation differs from the waiver in the case of inadmissible immigrants in hardship cases; see § 3(d), *supra*.

³¹ See ch. 33, § 29.

³² Assistant Commissioner, *In the Matter of O.*, Interim Decision 992, March 19, 1959; approved by BIA, April 2, 1959.

³³ For a fuller discussion see ch. 45, § 2(d)(2).

CHAPTER 35

REQUIREMENTS APPLICABLE TO SPECIAL GROUPS— FOREIGN GOVERNMENT OFFICIALS, INTERNATIONAL ORGANIZATION ALIENS, NATO ALIENS, ALIENS COMING FROM TERRITORIES AND POSSESSIONS, AND AMERICAN INDIANS

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§ 1. Summary. — In consideration of international comity in the case of foreign government officials, and of treaty obligations in the case of international organization aliens, the law exempts aliens within these categories from certain of the qualitative grounds of inadmissibility. The law also makes special provisions for aliens coming from territories and possessions. Generally speaking, such aliens are exempted from certain documentary requirements but must meet the qualitative tests required of all aliens seeking to enter the United States.

§ 2. Qualitative grounds of inadmissibility inapplicable to foreign government officials, international organization aliens and NATO aliens.—The following special rules apply to foreign government officials, international organization aliens and NATO aliens as far as grounds of inadmissibility to the United States are concerned.

(a) Foreign government officials.

(1) “A-1” aliens. Foreign government officials in the “A-1” category, i.e., ambassadors, public ministers, career diplomatic and consular officers, and the members of their immediate families, are not subject to any of the grounds of inadmissibility, except those provisions relating to reasonable requirements of passport and visa as a means of identification and documentation, unless the President so directs and specific instructions are issued by the Department of State. (Section 102 and 22 CFR 41.91(e)(2)(i)) However, no visa may be issued in the “A-1” category to an alien who is considered by the Department of State to be *persona non grata*. (22 CFR 41.91(e)(1))

(2) “A-2” aliens. Foreign government officials in the “A-2” category, i.e., other foreign government officials and employees and the members of their immediate families, are inadmissible only if their entry would be prejudicial to the public interest or if they would engage in activities subversive to the national security. These officials are not subject to any other grounds of inadmissibility except those provisions relating to reasonable requirements of passport and visa as a means of identification and documentation. (Section 102 and 22 CFR 41.91(e)(2)(ii)) However, no visa may be issued in the “A-2” category to an alien who is considered by the Department of State to be *persona non grata*. (22 CFR 41.91(e)(1))

(3) “C-2” aliens. Nonimmigrants in the “C-2” category, i.e., aliens in transit to and from the United Nations Headquarters District and foreign countries, are subject to the excluding grounds only as far as they relate to the requirements of passport and visa; to membership in subversive organizations and to aliens who would engage in activities subversive to the national security or whose entry would be prejudicial to the public interest. (22 CFR 41.91(e)(2)(iii))

(4) “C-3” aliens. Foreign government officials classified “C-3,” i.e., those in immediate and continuous transit through the United States, are subject only to requirements of passport and visa and to the excluding provisions affecting aliens who would engage in activities subversive to the national security

or whose entry would be prejudicial to the public interest. (Section 212(d) (8) and 22 CFR 41.6(e) (2) and 41.91(e) (2) (iv))

(b) International organization aliens.

(1) **"G-1" aliens.** Nonimmigrants in the "G-1" category, i.e., principal resident representatives of a foreign government to designated international organizations, resident members of their staff and members of their immediate families, are subject only to reasonable requirements of passport and visa as a means of identification and documentation and to the excluding provisions affecting aliens whose entry would be prejudicial to the public interest. (Section 102 and 22 CFR 41.91(e) (2) (v))

(2) **"G-2," "G-3" and "G-4" aliens.** Nonimmigrants in the "G-2," "G-3" and "G-4" categories, i.e., other international organization aliens, are subject to the provisions relating to reasonable requirements of passport and visa as a means of identification and documentation and to the excluding provisions affecting aliens who would engage in activities subversive to the national security or whose entry would be prejudicial to the public interest. (Section 102 and 22 CFR 41.91(e) (2) (vi))

(c) **"A-3" and "G-5" attendants, servants and personal employees.** Nonimmigrants in the "A-3" and "G-5" categories, i.e., attendants, servants and personal employees of any foreign government official or international organization alien, and the members of their families, are subject to all the provisions relating to the exclusion of aliens, except those relating to membership in, or affiliation with, certain subversive organizations. (Section 212(d) (2) and 22 CFR 41.91(e) (3))¹

(d) NATO officials.

(1) **"NATO-1" aliens.** Nonimmigrants in the "NATO-1" category, i.e., the principal permanent representative of Member State to NATO and resident members of his official staff, Secretary General, Deputy Secretary General and Executive Secretary of NATO; Coordinator of North Atlantic Defense Production; other permanent NATO officials of similar rank; and members of immediate families, are subject only to reasonable requirements of passport and visa as a means of identification and documentation and to the excluding provisions affecting aliens whose entry would be prejudicial to the public interest. (22 CFR 41.91(e) (2) (vii))

¹ See Senate Report No. 1137, 82nd Congress, Second Session, p. 6, and House Report No. 1365, 82nd Congress, Second Session, p. 34.

(2) "NATO-2," "NATO-3," "NATO-4" and "NATO-6" aliens. Nonimmigrants in the "NATO-2," "NATO-3," "NATO-4" and "NATO-6" categories, i.e., representative of Member State to NATO Council or any of its subsidiary bodies; official clerical staff accompanying a representative to NATO or its Council or subsidiary bodies, officials of NATO; members of civilian components under the Status-of-Forces Agreement and under the International Military Headquarters Protocol; and members of immediate families, are subject only to the provisions relating to reasonable requirements of passport and visa as a means of identification and documentation and to the excluding provisions affecting aliens who would engage in activities subversive to the national security or whose entry would be prejudicial to the public interest. (22 CFR 41.91 (e) (2) (viii))

§ 3. Requirements applying to aliens traveling to and from territories, possessions, and other areas under American administration.

(a) **Travel to and from continental United States, Alaska, and Hawaii.** An alien coming from a foreign port and applying for admission into Alaska or Hawaii must meet the same requirements as an alien applying for admission into the continental United States. Since Alaska and Hawaii have become the 49th and 50th States, respectively,² direct travel by aliens from one of these States to the other or to the continental United States or from continental United States to these areas does not constitute an "entry" as that term is defined³ and therefore does not bring into play the admission requirements of the immigration laws.⁴

(b) **Entry into the United States from Puerto Rico, Guam, and the Virgin Islands.** Although Puerto Rico, Guam, and the Virgin Islands of the United States by definition are part of the United States for purposes of the immigration laws (Section 101(a)(38)), the law specifically requires that an alien who leaves Guam, Puerto Rico, or the Virgin Islands and seeks to enter the continental United States, Alaska, Hawaii, or any other place under the jurisdiction of the United States must meet all the qualitative requirements of the law set forth in Chapter 33, but exempts him from the passport and visa requirements. (Section 212(d)(7), as amended)⁵ For example, an

² Act of July 7, 1958 (72 Stat. 339), and Act of March 18, 1959 (73 Stat. 4).

³ See ch. 5, § 3(a).

⁴ For a discussion of the statutory provisions governing admissions to continental United States from Alaska and Hawaii before they acquired statehood, see First Edition, pp. 197, 198.

⁵ Section 212(d)(7) was amended by the Alaska Statehood Act of July 7, 1958 (72 Stat. 339) and the Hawaii Statehood Act of March 18, 1959 (73 Stat. 4). These acts deleted the words "Alaska" and "Hawaii" from this provision of law.

alien admitted as an immigrant to Puerto Rico who seeks to enter the continental United States, Alaska, or Hawaii without having entered a foreign country since leaving Puerto Rico is not required to present a passport or immigrant visa when applying for admission at a port of entry but must show that he is not inadmissible for one of the substantive grounds of disqualification described in Chapter 33.⁶

(c) Entry into the United States from other areas under American administration. An alien seeking entry into the United States from one of the outlying possessions of the United States, i.e., American Samoa and Swains Island (Section 101(a)(29)), or any of the other areas under American administration, not referred to under (b) above, such as the Canal Zone, the Trust Territories of the Pacific Islands and the Ryukyu Islands are, as far as the immigration laws are concerned, in the same position as an alien coming from a foreign country and, therefore, must obtain an appropriate visa and qualify in every other respect for admission into the United States.⁷

(d) Entry into Puerto Rico, Guam, and the Virgin Islands. Inasmuch as Puerto Rico, Guam, and the Virgin Islands of the United States are by definition parts of the United States, an alien seeking entry into these areas must be in possession of an appropriate visa and must comply with all other requirements of the immigration laws.⁸ In addition, an alien seeking to enter Guam must obtain entry permission from the United States naval authorities at Guam. Information about the securing of this entry permission can be obtained from the Naval Attache' of the nearest American Embassy or Legation.

(e) Entry into the Canal Zone. Rules governing the admission into, and the exclusion and deportation from, the Canal Zone are contained in Part 10 of Title 35 of the Code of Federal Regulations.⁹ Under these regulations the Immigration Service of the Postal, Customs, and Immigration Division of the

⁶ An alien returning to the continental United States, Alaska or Hawaii from a temporary visit to Puerto Rico or Guam, however, is held by the courts not to have left the United States and, therefore, is not subject to the immigration laws when he returns. (*Savoretti v. Voiler*, 214 Fed. (2d) 425 (1954), in the case of Puerto Rico, and *United States v. Paquet*, 131 F. Supp. 32 (1955) in the case of Guam)

⁷ See Appendix D for list of visa-issuing offices in these areas.

⁸ However, alien residents of the continental United States, Alaska and Hawaii are not subject to the documentary or qualitative requirements of the law when traveling from the continental United States, Alaska or Hawaii directly to any of the possessions. (BIA, *In the Matter of A.*, 5, I. & N. Dec. 441, August 25, 1953; see also Senate Report No. 1515, 81st Congress, Second Session, p. 658)

⁹ The control of the entry of aliens into the Canal Zone prescribed by Presidential Proclamation No. 3004 of January 17, 1953 (18 Fed. Reg. 489) was terminated effective February 10, 1956 (21 Fed. Reg. 938); see ch. 33, § 32(a)(2).

Civil Affairs Bureau of the Canal Zone is responsible for the exclusion of undesirables while the Police Division of the Bureau is responsible for deportation. (35 CFR 10.39) Regulations prescribe certain classes of undesirable aliens who may not be admitted and, once admitted, must be deported. They include persons who are undesirable for physical or mental defects, criminal or subversive background, and persons "whose presence, in the judgment of the Governor, would be a menace to the public health and welfare of the Canal Zone, or would tend to create public disorder or obstruct the operation, maintenance, sanitation, government or protection of the Panama Canal or Canal Zone." (35 CFR 10.1)

The determination of the eligibility of a person to enter and remain in the Canal Zone, in advance of his arrival, is a function of the Executive Secretary of the Canal Zone as far as the enforcement of the general policies of the Panama Canal is concerned. Advance authorization to enter the Zone may be issued by the Executive Secretary. (35 CFR 10.3)

(f) Entry into other areas under American administration. The entry into the outlying possessions of the United States, i.e., American Samoa and Swains Island, and into other areas under American administration, not listed under (d) and (e) above, is not governed by American immigration law but by rules and regulations applicable to each of these areas.¹⁰ Inquiries should be directed as follows:

(1) for the outlying possessions to the respective governor;

(2) for the Trust Territories of the Pacific Islands to the respective district administrator or naval administrator;¹¹

(3) for the Ryukyu Islands to the Pacific military authorities through the military attache' at the nearest American Embassy or Legation.

§ 4. American Indians born in Canada.

(a) Rule. American Indians born in Canada who possess at least fifty per centum of blood of the American Indian race are permitted to pass the borders of the United States irrespective of any provisions of the Immigration and Nationality Act. (Section 289)

¹⁰ The control of the entry of aliens into American Samoa prescribed by Presidential Proclamation No. 3004 of January 17, 1953 (18 Fed. Reg. 489) was terminated effective November 14, 1957 (22 Fed. Reg. 9058).

¹¹ See Appendix D for list of districts and location of administrators.

(b) **Background.** The right of American Indians born in Canada freely to pass the borders of the United States was originally based on Article III of the Treaty of 1794 between the United States and Great Britain, commonly known as the "Jay Treaty"¹² which gave to "the Indians dwelling on either side of the said boundary line, (the right) freely to pass and repass . . . into the respective territories and countries of the two parties." The courts held¹³ that this provision of the treaty was not abrogated by the War of 1812, but was recognized by Article IX of the Treaty of Ghent, signed in 1814.¹⁴ The Act of April 2, 1928¹⁵ gave statutory recognition to the right of American Indians born in Canada to pass the borders of the United States by making the provisions of the Immigration Act of 1924 inapplicable to them.

(c) **Scope of exemption.** American Indians born in Canada, as a result of the existing exemptions, are not subject to any documentary requirements¹⁶ and are not excludable from admission.¹⁷

Obviously, it is the intent of Section 289 and its predecessor statute to preserve the treaty rights of Indians "freely to pass and repass" the border between Canada and the United States. It would not seem inconsistent with the intent of Section 289 for an alien born in Canada of Indian blood to apply for and be issued an immigrant visa if he qualifies therefor and intends to reside permanently in the United States.

¹² 8 Stat. 116, 117.

¹³ *McCandless v. United States ex rel. Diabo*, 25 Fed. (2d) 71 (C.C.A. 3, 1928), and *United States ex rel. Goodwin v. Karnuth*, 74 F. Supp. 660 (D.C.W.D.N.Y., 1947).

¹⁴ 8 Stat. 222; see also BIA, *In the Matter of A.*, 1, I. & N. Dec. 600, November 13, 1943, and BIA, *In the Matter of B.*, 3, I. & N. Dec. 191, March 25, 1948; and Hackworth, *Digest of International Law*, Vol. III, p. 753, Washington, 1942.

¹⁵ 45 Stat. 401.

¹⁶ See ch. 33, §§ 17 and 18, and ch. 13, § 1(b)(4).

¹⁷ See 1, I. & N. Dec. 600, and 3, I. & N. Dec. 191, *supra*.

CHAPTER 36

THE VISA REFUSAL AND ITS REVIEW

SECTION.

1. Responsibilities of Secretary of State and consular officers.
2. Refusal procedure.
 - (a) Procedure in immigrant cases.
 - (b) Procedure in nonimmigrant cases.
3. Review of visa refusal at consular offices.
4. Review of visa refusal by the Department of State—Advisory opinions.
 - (a) Submission of visa cases for advisory opinion.
 - (b) Advisory opinion process.
 - (c) Significance of advisory opinion.
5. Reconsideration of visa refusal.
6. Consular decision not reviewable by courts.

§ 1. Responsibilities of Secretary of State and consular officers.

—The responsibilities of the Secretary of State and consular officers in the administration of the immigration laws, particularly with respect to the issuance and refusal of visas, are delineated in Sections 104 and 221(g). While Section 104 charges the Secretary of State with the administration and enforcement of the provisions of the immigration laws relating to the powers, duties, and functions of diplomatic and consular officers, it excepts those conferred on consular officers relating to the granting or refusal of visas. However, it also requires the Secretary of State to establish such regulations and issue such instructions as he deems necessary for carrying out the provisions of the immigration laws.

Under the provisions of Section 221(g) a consular officer is enjoined from issuing a visa if:

(a) it appears to him from statements contained in the visa application or in papers submitted with the application that the alien is ineligible to receive a visa for the reasons described in Chapter 33; or

(b) he otherwise knows or has reason to believe that the alien is ineligible to receive a visa; or

(c) the visa application fails to comply with the provisions of law or regulations.

A visa may be refused only upon a ground specifically set out in the law or regulations. "Reason to believe" that an alien is ineligible to receive a visa presupposes a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to re-

ceive a visa. In determining whether the ground for a prior refusal of a visa may no longer exist, consular officers will consider any evidence submitted. (22 CFR 41.90 and 42.90)

The provision of Section 104 that the Secretary's responsibility for the administration of the immigration laws does not extend to the functions conferred upon consular officers relating to the granting or refusing of visas, is held to preclude the Secretary of State from directing a consular officer to grant or refuse a visa in a particular case. However, since the Secretary of State is responsible for the prescription of regulations and the issuance of instructions, rulings of the Department of State concerning an interpretation of law, as distinguished from an application of the law to the facts, are binding on consular officers. (22 CFR 41.130(c) and 42.130(d))

§ 2. Refusal procedure.

(a) **Procedure in immigrant cases.** An immigrant visa is not refused until the applicant has executed Form FS-510, "Application for Immigrant Visa and Alien Registration." The applicant is informed of the provision of law on which the refusal is based and of any statutory provisions under which administrative relief is available. A record is made in the consular files about the refusal and its statutory basis. The applicant is also informed that the consular officer's decision to refuse the visa will be reviewed by at least one other consular officer and that he will be given written notice of this review. (22 CFR 42.130(a))

(b) **Procedure in nonimmigrant cases.** If a consular officer knows or has reason to believe that an alien is ineligible to receive a visa on grounds which cannot be overcome by the presentation of additional evidence, nonimmigrant visa application Form FS-257, if practicable, must be executed before the refusal is recorded. If the alien fails to execute Form FS-257 after being informed of a ground of ineligibility, the visa will be considered refused. A record is made in the consular file indicating the reasons for the refusal. The applicant is informed of the provision of law on which the refusal is based. (22 CFR 41.130(a))

§ 3. Review of visa refusal at consular offices.—The principal consular officer at a post or an alternate specifically designated by him is required to review the case of each applicant who has been refused an immigrant visa. In the case of the refusal of a nonimmigrant visa the review takes place immediately if the ground for the refusal cannot be overcome by the presentation of additional evidence; if the ground of ineligibility may

be overcome and the applicant has indicated that he intends to submit additional evidence the review of the refusal may be deferred for sixty days.

If the reviewing officer concurs in the refusal, his decision is recorded in the visa file. If the reviewing officer does not concur in the refusal he will either:

- (1) refer the case to the Department of State for an advisory opinion, or
- (2) assume responsibility for the case himself.

If the refusal is upheld, formal written notice of the decision is delivered or mailed to the applicant indicating the statutory basis for the refusal. (22 CFR 41.130(b) and (c) and 42.130(b) and (c))

§ 4. Review of visa refusal by the Department of State—Advisory opinions.—The rendering of advisory opinions is one of the major functions of the Visa Office of the Department of State which is statutorily established within the Bureau of Security and Consular Affairs.¹

(a) Submission of visa cases for advisory opinion. A visa case is submitted to the Department of State:

- (1) if the visa is refused and the reviewing officer submits the case to the Department as outlined under Section 3;
- (2) if a visa case falls within a category of cases which must be submitted to the Department if a visa has been refused;
- (3) if the Department requests the submission of an individual case in which a visa has been refused (22 CFR 41.130(d) and 42.130(d); or
- (4) if a consular officer, before reaching a final decision, submits the case to seek the advice of the Department on a question of interpretation of law or on the application of the law to the facts in the individual case.

The Department frequently requests to have a case submitted for review as the result of an inquiry from a member of Congress, the visa applicant, either directly or through a relative, friend, or an attorney, or any other person with a legitimate interest in a pending visa case.

(b) Advisory opinion process. Advisory opinions are initially handled in the Visa Office. Only the most routine advisory opinions are subject to the scrutiny of so few as two officers.

¹ See ch. 3, § 3(b).

These usually relate to cases on which precedent decisions have already been developed. Any advisory opinion request which goes beyond established precedents is reviewed by experienced senior personnel under the direct supervision of the Director of the Visa Office. Many legal questions are referred to the General Counsel of the Visa Office who serves under the general direction of the Legal Adviser of the Department of State. Occasionally questions of law are submitted to the Attorney General for a ruling.² Visa cases of far-reaching legal or political significance are brought to the attention of the Administrator of the Bureau of Security and Consular Affairs who decides whether they should be taken to higher level.

(c) **Significance of advisory opinions.** Rulings of the Department concerning interpretation of law are binding on consular officers.³ When the evaluation of facts is at issue the Department will give great weight to the judgment of the consular officer who has the facts and the applicant before him.

If upon the receipt of the advisory opinion of the Department of State the consular officer contemplates taking action contrary to the advisory opinion, the case must be resubmitted to the Department with an explanation of the proposed action. (22 CFR 41.130(d) and 42.130(d)) In case of a serious disagreement in a particular case the principal consular officer at the post can assign the case to another officer, thereby substituting the judgment of one consular officer for that of another.⁴

§ 5. Reconsideration of visa refusal.—If an immigrant visa is refused, and the applicant within 120 days from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, his case will be reconsidered without the requirement of the payment of an additional application fee. (22 CFR 42.130(e))

If a nonimmigrant visa is refused new evidence will be considered when submitted. No fee is required in connection with the application for a nonimmigrant visa.

² For example, see 41 Op. Atty. Gen. No. 77, 1959. Rulings of the Attorney General on questions of law are binding both on consular officers and officers of the Immigration and Naturalization Service. (Section 103(a)) See ch. 3, § 3(b).

³ See § 1, *supra*.

⁴ For a fuller discussion of the review of visa refusals and the advisory opinion procedure, see Auerbach, "Administration of the Immigration Laws by the Department of State and the Foreign Service," *Department of State Bulletin*, October 20, 1958, p. 621, and "The Visa Process and Review of Visa Applications," *Department of State Bulletin*, October 10, 1960, p. 578; Wildes, "Review of Denial of Visa," *Interpreter Releases*, December 4 and 9, 1959, pp. 331 and 341. For critical views see Rosenfield, "Consular Non-reviewability," *American Bar Association Journal*, December 1955.

§ 6. **Consular decision not reviewable by courts.**—The action of consular officers in refusing to issue a visa is not reviewable by the courts. This doctrine has been accepted since a decision in 1929 of the Court of Appeals of the District of Columbia.⁵ When agreeing that an exclusion order issued by the Immigration and Naturalization Service under the Immigration and Nationality Act is reviewable by declaratory judgment action under the Administrative Procedure Act, the Supreme Court reaffirmed this doctrine when it said: "We do not suggest, of course, that an alien who has never presented himself at the borders of this country may avail himself of the declaratory judgment action by bringing the action from abroad."⁶

⁵ U.S. ex rel. Ulrich v. Kellogg (1929) 30 Fed. (2d) 984, U. S. App. D.C. 360.

⁶ Brownell v. Shung (1956) 352 U. S. 180, 1 L. ed. (2d) 225, 77 Sup. Ct. 252.

PART V
ADMISSION AND EXCLUSION OF ALIENS—PAROLE

CHAPTER 37

ADMISSION AND EXCLUSION PROCEDURE

SECTION.

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7. Special procedure for alien crewmen.
8. Special provisions for foreign government officials and international organization aliens.
9. Court review of exclusion orders.
 - (a) No constitutional guarantees.
 - (b) Test of fair hearing through writ of habeas corpus.
 - (c) Review by declaratory judgment.
10. Deportation of excluded aliens.
11. Stay of deportation of excluded aliens.

§ 1. Summary.—Whether an alien is admissible to the United States when he arrives at a port of entry is determined by the

Immigration and Naturalization Service. The fact that an alien is in possession of an immigrant or nonimmigrant visa in itself does not entitle him to enter the United States if he is found inadmissible by the Immigration and Naturalization Service. (Sections 221(h), 235) The burden of proof that he is admissible rests upon the applicant for admission. (Section 291)

The initial examination of an arriving alien, called primary inspection, is conducted by an inspecting immigration officer. He can admit but not exclude the alien.¹ If the inspecting immigration officer, also referred to as primary inspector, believes that the cause of the alien's excludability can be readily removed by the exercise of discretionary authority he may refer the case to the district director. If the district director exercises discretionary authority the primary inspector may admit the alien. However, if an alien is not clearly entitled to land he must be detained and the case referred for further inquiry to a special inquiry officer.² The special inquiry officer conducts a formal hearing. The decision of the special inquiry officer must be based on the evidence of record and, with certain exceptions,³ may be appealed to the Board of Immigration Appeals.⁴ Special rules apply if an alien is excluded on physical or mental grounds.⁵ Limited judicial review of the final administrative decision in exclusion proceedings is available by habeas corpus and declaratory judgment action.⁶

§ 2. Inspection and admission of aliens.

(a) **Inspection at ports of entry.** Every alien, whether immigrant or nonimmigrant, arriving at a port of the United States, is examined by one or more immigration officers in order to determine whether he is entitled to land. Immigration officers are authorized to board and search any vessel, aircraft, railway car or other vehicle in which they believe aliens are being brought into the United States. (Section 235(a))

(b) **Preexamination in United States territories and possessions.** In the case of any aircraft proceeding from Guam, Puerto Rico or the Virgin Islands of the United States directly to any other of such places or to the continental United States, the examination may be made immediately prior to the departure of the aircraft. (8 CFR 235.5(a))

¹ See § 2(e) and (f), *infra*.

² See § 2(f), *infra*.

³ See §§ 5, 6, and 7, *infra*.

⁴ See § 3, *infra*.

⁵ See § 4, *infra*.

⁶ See § 9, *infra*.

(c) **Preexamination in contiguous territory and adjacent islands.** In the case of any aircraft or vessel proceeding directly from foreign contiguous territory or adjacent islands to the continental United States, the examination may be made immediately prior to the departure of the aircraft or vessel. The examination of aliens under these circumstances has the same effect as though made at the destined port of entry into the United States. (8 CFR 235.5(b))

(d) **General qualifications.** Every alien asking admission into the United States may be required to state under oath the purpose for which he comes and the length of time he intends to remain in the United States. He can be required to give any other information necessary for determining whether he belongs to any of the excludable classes described in Chapter 33. The following general qualifications and requirements must be met by any alien seeking to enter the United States as an immigrant or nonimmigrant:

(1) He must apply for admission in person at a place designated as a port of entry for aliens;

(2) He must apply for admission at a time the immigration office at the port is open for inspection;

(3) He must make his application in person to an immigration officer;

(4) He must present whatever documents are required, and

(5) He has to establish that he is not subject to exclusion under the immigration laws, Executive orders or Presidential proclamations. (8 CFR 235.1)

(e) **Admission.** If the inspecting immigration officer finds an alien admissible he will insert in the alien's passport, if one is required, the word "admitted" and the date and place of admission. The same information will be inserted on the immigrant visa, reentry permit, or the Arrival-Departure Card (Form I-94), presented by, or prepared for, an alien who is admitted. (8 CFR 235.4)

(f) **Detention and referral.** If the examining immigration officer finds that an alien is not clearly entitled to land, or if his decision to admit him is challenged by another immigration officer, the alien is detained for further inquiry by a special inquiry officer as described in Section 3 below. However, if the examining officer has reason to believe that the cause of an alien's excludability can readily be removed by:

(1) the posting of a bond,

(2) the exercise of discretionary authority vested in the

Attorney General to waive certain grounds of ineligibility or to waive jointly with the Secretary of State certain documentary requirements,⁷ or

(3) the exercise of discretionary authority by the Attorney General for the admission of otherwise inadmissible returning resident aliens,⁸

he may, instead of detaining the alien, refer his case to the district director within whose district the port is located. In such case further examination is deferred until the district director has decided whether the alien should be admitted by granting administrative relief as indicated above. (Section 236 (a) and 8 CFR 235.7)

If the examining immigration officer detains the alien for further inquiry before a special inquiry officer, the alien must be promptly informed by the delivery of Form I-122, "Notice to Alien detained for Hearing by Special Inquiry Officer." (8 CFR 235.6)

§ 3. Special inquiry.

(a) **Special inquiry officer.** A special inquiry officer is an immigration officer whom the Attorney General deems specially qualified to conduct special inquiries and who is designated and selected by the Attorney General individually or by regulations to conduct such proceedings. No immigration officer is permitted to act as a special inquiry officer in any case in which he has engaged in investigative or prosecuting functions. (Sections 101(b)(4), 236(a))

(b) **Responsibilities.** The special inquiry officer determines whether an alien detained on inspection is to be excluded and deported from the United States or whether he will be permitted to enter. Hearings before the special inquiry officer are not public, but the alien may have one friend or relative present. The decision of a special inquiry officer in exclusion proceedings must be rendered only on the evidence produced in the hearing and is final unless it is reversed on appeal. (Section 236(a) and (b))⁹ In exclusion proceedings the special inquiry officer rules on objections, introduces material and relevant evidence in be-

⁷ See ch. 34, §§ 3 and 4; ch. 29, § 12.

⁸ See ch. 34, § 2.

⁹ Absence of express statutory authority does not preclude assignment of examining officer to interrogate applicant in exclusion hearing before special inquiry officer, as other provisions of law and regulations vest authority in the Attorney General and officers designated by him to question applicants for admission. Special inquiry officer is justified in drawing adverse inference from applicant's refusal in an exclusion hearing to respond to interrogation by examining officer assigned to the case. (Attorney General, *In the Matter of M.*, Interim Decision 952, September 5, 1958)

half of the Government and the alien and regulates the course of the hearing. (8 CFR 236.2(b))

(c) **Hearing.** If the alien has a relative or friend present at the hearing who is a witness in the case, the testimony of the relative or friend is completed before he is permitted to remain at the hearing. In exclusion proceedings the alien may be represented by an attorney or representative who is permitted to examine the alien. The attorney or representative or the alien himself is permitted to examine any witness offered in the alien's behalf and to cross-examine any witnesses called by the Government, to offer evidence and to make objections.¹⁰ (8 CFR 236.2)

(d) **Examining officer.** The district director may assign an immigration officer to the exclusion proceedings as an examining officer for the Government. The responsibilities of an examining officer include the presentation of evidence and the interrogation, examination and cross-examination of the applicant and other witnesses. (8 CFR 236.2(c))

(e) **Record of hearing.** Exclusion hearings are recorded verbatim except for statements made off the record with the permission of the special inquiry officer. The record of the hearing including the testimony and exhibits, the special inquiry officer's decision and all written orders, motions and appeals constitute the record in the case. (8 CFR 236.2(d))

(f) **Decision.** The special inquiry officer will either admit or exclude the alien. His decision may be oral or written. If made orally the alien, at his request, is furnished with a transcript of the decision. (8 CFR 236.3)

(g) **Appeal.**

(1) **Appeal by alien.** The decision of the special inquiry officer excluding the alien may be appealed to the Board of Immigration Appeals. If the decision is made orally, the alien who wishes to appeal must file immediately Form I-290A, "Notice of Appeal to the Board of Immigration Appeals." He is given ten days to file a brief. An appeal from a written decision must be taken within ten days after mailing. (8 CFR 236.5(b))

(2) **Appeal by district director.** An order admitting the alien may be appealed by the district director within five days

¹⁰ A returning resident alien seeking readmission to the United States, who is required to be given a hearing sufficient to meet the requirements of procedural due process, is properly given an exclusion hearing, rather than a deportation hearing, since his admissibility can properly be determined only in an exclusion hearing. (BIA, *In the Matter of K.H.C.*, 5, I. & N. Dec. 312, June 30, 1953)

from the day of decision.¹¹ In such case the alien is advised that he may make representations to the Board including the filing of a brief. (8 CFR 236.5(c))

(3) **No appeal to Board in medical cases.** If the excluding decision is based on medical findings, the procedure outlined in Section 4 is followed and no appeal lies to the Board. (8 CFR 236.5(a))

§ 4. Exclusion on physical or mental grounds.

(a) **Examination.** The physical and mental examination of arriving aliens, including alien crewmen, is made by medical officers of the United States Public Health Service. Any mental defect or disease observed during the examination is certified for the information of the examining immigration officer and the special inquiry officer. (Section 234)

The medical officer at the port of entry has at his disposal the X-ray film and medical examination report prepared at the time of visa issuance. If, however, no such report is presented by an alien, the required examinations will be made at the port of entry. (42 CFR 34.4)

(b) **Certification.** If an alien is found to have any physical or mental defect, disease or disability, the medical officer reports his findings to the examining immigration officer or the special inquiry officer by medical certificate. (42 CFR 34.6)

Depending on the seriousness of the finding, a Class "A," Class "B" or Class "C" certificate will be issued.

(1) **Class "A" certificate.** A Class "A" certificate is issued with respect to aliens who are mandatorily inadmissible because they:

- (i) are feeble-minded, or insane, or have had one or more attacks of insanity;
- (ii) are afflicted with psychopathic personality, epilepsy, or a mental defect;
- (iii) are narcotic drug addicts or chronic alcoholics; or
- (iv) are afflicted with tuberculosis in any form, leprosy, or any other dangerous contagious disease.

A Class "A" certificate is not issued if an alien has only a mental shortcoming due to ignorance, or is suffering only from a mental condition attributable to remediable physical causes,

¹¹ See ch. 4 for jurisdiction of Board of Immigration Appeals and referral of its decisions to the Attorney General.

or from a psychosis of a temporary nature, caused by a toxin, drug or disease. (42 CFR 34.7)

(2) **Class "B" certificate.** A Class "B" certificate is issued in the case of an alien who has a physical defect, disease or disability serious in degree or permanent in nature amounting to a substantial departure from normal physical well-being. (42 CFR 34.8)

(3) **Class "C" certificate.** A Class "C" certificate is issued in the case of an alien who has a defect, disease or disability other than one for which a Class "A" or Class "B" certificate is required. (42 CFR 34.10)

(c) **Medical appeal.** An alien who is certified by a medical officer to be excludable on account of feeble-mindedness, insanity, epilepsy, narcotic drug addiction, alcoholism, or as a person of psychopathic personality, may appeal this decision to a special board of medical officers convened by the Surgeon General of the United States. The alien is permitted to introduce before such board at least one expert medical witness. (Section 234 and 42 CFR 34.14) If the alien takes an appeal, the district director arranges for the convening of the medical board. (8 CFR 235.6(b))

(d) **Decision by special inquiry officer.** No appeal lies from a decision of a special inquiry officer excluding an alien who has been certified by a medical officer or a board of medical officers as being afflicted with tuberculosis, leprosy or any dangerous contagious disease or as suffering from feeble-mindedness, insanity, epilepsy, drug addiction, alcoholism, or as a person of psychopathic personality. (Section 236(d) and 8 CFR 236.5(a))

If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect or disability which may affect his ability to earn a living, other than tuberculosis, leprosy, or any dangerous contagious disease, he may appeal this decision to the Board of Immigration Appeals. In such case the alien may be admitted in the discretion of the Board of Immigration Appeals upon the giving of an indemnity bond or undertaking holding harmless the United States and its subdivisions against the alien's becoming a public charge. (Sections 236(d), 213)¹²

§ 5. **No special inquiry in stowaway cases.**—In the case of a stowaway the finding of excludability by an immigration officer during inspection is final. In other words, a stowaway is not

¹² See ch. 33, § 12(e).

held for examination before a special inquiry officer, and he is not permitted to land except temporarily for medical treatment. (Section 273(d))¹³

§ 6. Special procedure in security cases.

(a) **Temporary exclusion.** If an alien appears to an immigration officer during inspection or to a special inquiry officer during special inquiry proceedings to be inadmissible because of membership in, or affiliation with, a subversive organization, or because he would engage in activities subversive to the national security, or because his admission would be prejudicial to the public interest, he is temporarily excluded. (Section 235(c), 236(b) and 8 CFR 235.8(a))

(b) **Referral to regional commissioner.** The case of an alien temporarily excluded is reported promptly to the district director having administrative jurisdiction over the port at which the alien arrived. The district director submits the case of such an alien, other than that of an alien crewman, to the regional commissioner for further action. (8 CFR 235.8(a))

(c) **Action by regional commissioner.** If the regional commissioner concludes that the alien's inadmissibility is based on information of a confidential nature the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any hearing or further hearing by a special inquiry officer and order the alien excluded and deported. Otherwise, the regional commissioner may direct that the immigration officer continue the alien's examination or that the alien be given a hearing or a further hearing before a special inquiry officer. (8 CFR 235.8(b))

(d) **Finality of decision.** No appeal lies from the decision of the regional commissioner in security cases. (8 CFR 235.8(c))

§ 7. Special procedure for alien crewmen.—A special procedure is followed in connection with the admission of alien crewmen. This procedure is described in Chapter 28.

§ 8. Special provisions for foreign government officials and international organization aliens.—An alien who is an officer or

¹³ Notwithstanding the provisions of § 273(d), a resident alien who departs temporarily and is returning to an unrelinquished residence in the United States is entitled to a hearing before he can be deported and it makes no difference whether the case arises in expulsion or exclusion proceedings. There is no distinction as to the residence of a seaman serving on American vessels returning as a seaman or returning as a stowaway. In either case, he is entitled to a hearing because his prior residence in the United States clothed him with the protection of the due process clause of the Fifth Amendment. (BIA, *In the Matter of B.*, 5, I. & N. Dec. 712, March 15, 1954)

employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien is not entitled to enter the United States as an immigrant unless he executes a written waiver of all rights, privileges, exemptions and immunities which would otherwise accrue to him because of his occupational status. Such waiver has to be executed on Form I-508. (Section 214(b))¹⁴

§ 9. Court review of exclusion orders.

(a) **No constitutional guarantees.** An alien applying for admission to the United States who is excluded at the port of entry does not have status or legal protections equivalent to those granted an alien already in the United States. The constitutional guarantees under the Fifth Amendment do not apply in exclusion proceedings. The Supreme Court has stressed the basic difference between the status of an alien in exclusion proceedings and in deportation proceedings:

"It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law . . . But an alien on the threshold of initial entry stands on a different footing."¹⁵

The Supreme Court, since 1892, has held that in exclusion cases involving an alien's initial entry, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."¹⁶ The Court reaffirmed this view more recently:

". . . an alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States shall prescribe . . . Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien . . . Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." And the court has "no authority to retry the determination of the Attorney General."¹⁷

¹⁴ See also ch. 41.

¹⁵ *Shaughnessy v. Mezei* (1953), 345 U. S. 206, 97 L. ed. 956, 73 Sup. Ct. 625. See ch. 46, § 16 for a discussion of court review of deportation orders.

¹⁶ *Ekiu v. U.S.* (1892), 142 U. S. 651, 35 L. ed. 1146, 12 Sup. Ct. 336.

¹⁷ *Knauff v. Shaughnessy* (1950), 338 U. S. 537, 542, 543, 544, 546, 94 L. ed. 317, 70 Sup. Ct. 309.

(b) **Test of fair hearing through writ of habeas corpus.** The Supreme Court has always permitted that due process in exclusion proceedings, as authorized by Congress, be tested through the writ of habeas corpus. Proceedings under this writ are limited to aliens in custody and do not afford a full judicial review of the issue, but rather permit an examination as to whether administrative action was taken after a fair hearing, supported by substantial evidence and based on statutory grounds.¹⁸ The court does not make a *de novo* finding on factual issues.

(c) **Review by declaratory judgment.** In 1956, the Supreme Court broadened the form of judicial action available in exclusion proceedings when it held that the legality of an exclusion order entered under the Immigration and Nationality Act may be reviewed by an action for declaratory judgment under Section 10 of the Administrative Procedure Act, June 11, 1946,¹⁹ in addition to the always available challenge by habeas corpus.²⁰ In so holding, the Court made it clear that, while it broadened the form of judicial action available, it did not enlarge the permissible scope of review traditionally permitted in exclusion cases. The significance of the Shung decision is that it affords judicial review within the substantive limitations of habeas corpus without requiring arrest, detention, or technical custody which are prerequisites of habeas corpus. Also, action under Section 10 of the Administrative Procedure Act may be brought against the Attorney General in the District of Columbia or against the district director or the officer in charge in the location where the case is being processed.²¹ In habeas corpus proceedings action must be brought where the alien is detained.

§ 10. **Deportation of excluded aliens.**—An alien who has been excluded from admission must be deported immediately²² to the country whence he came.²³ As a rule, the deportation will take place on the vessel or aircraft which brought him, in accommodations of the same class in which he arrived, at

¹⁸ *Chin Yow v. U.S.* (1908), 208 U. S. 8, 52 L. ed. 369, 28 Sup. Ct. 201; *Johnson v. Shaughnessy* (1949), 336 U. S. 806, 93 L. ed. 1054, 69 Sup. Ct. 921; *Kessler v. Strecker* (1939), 307 U. S. 22, 34; 83 L. ed. 1082, 59 Sup. Ct. 694; *Shaughnessy v. Mezei*, *supra*.

¹⁹ 60 Stat. 243, 5 U.S.C. 1009, F.C.A. 5 § 1009.

²⁰ *Brownell v. Tom We Shung* (1956), 352 U. S. 180, 1 L. ed. (2d) 235, 77 Sup. Ct. 252; see also ch. 46.

²¹ *Brownell v. Tom We Shung*, *supra* and *Ceballos y Arboleda v. Shaughnessy* (1957), 352 U. S. 599, 1 L. ed. (2d) 583, 77 Sup. Ct. 545.

²² The fact that an alien was not "immediately" deported does not give him a right to request that his deportation be governed by the provisions of § 243 which are applicable to aliens who have been found deportable after gaining admission into the United States. *Rogers v. Quan* (1958), 357 U. S. 193, 2 L. ed. (2d) 1252, 78 Sup. Ct. 1076.

²³ The phrase "country whence he came" has reference to geographical area from which alien came, without regard to particular government in control of area at the time

the expense of the transportation line which carried him. The Attorney General may defer deportation in his discretion if he concludes that immediate deportation is not practicable or proper. (Section 237(a))

In addition to the transportation expenses of his deportation from the United States, the transportation line bringing the alien is also responsible for the cost of the alien's maintenance, including detention expenses and expenses incident to detention while the alien is being detained. The transportation line is exempted from its responsibility for detention expenses, but not for transportation expenses, if the excluded alien claimed United States nationality and was in possession of an unexpired United States passport or if he was in possession of a valid, unexpired immigrant or nonimmigrant visa, or an unexpired reentry permit, and if he made application for admission within 120 days of the date of the issuance of the visa, or if in possession of a reentry permit, within 120 days of the date on which he was last examined and admitted by the Immigration and Naturalization Service. If the application for admission was made later than 120 days, the transportation line is exempted from its responsibility for detention expenses only if it establishes to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation. (Section 237(a))

If the vessel or aircraft by which the excluded alien arrived has left the United States, he will be deported by another vessel or aircraft owned by the same transportation line. If this is impracticable within a reasonable time, deportation will be effected on any other vessel or aircraft and its cost recovered by civil suit from the responsible transportation line. (Section 237(c))

§ 11. Stay of deportation of excluded aliens.—The immediate deportation of an excluded alien may be stayed in the discretion of district directors upon a determination that immediate deportation is not practicable or proper, or that the alien's testimony is necessary in behalf of the United States. (Section 237(d) and 8 CFR 237.1)²⁴

of exclusion. That Communist China is not recognized by the United States does not prevent it from being "a country," within the meaning of the statutory provision. (U.S. ex rel. Tom We Shung v. John L. Murff, 176 F. Supp. 253 (D.C., S.D. N.Y., 1959))

²⁴ The deportation of an excluded alien may not be withheld because the alien would be subject to physical persecution in the country of deportation under the provisions of § 243(h) inasmuch as an excluded alien is not "within the United States" in the meaning of that section. *Leng May Ma v. Barber* (1958), 357 U. S. 185, 2 L. ed. (2d) 1246, 78 Sup. Ct. 1072. See ch. 46, § 12 for a fuller discussion of "withholding of deportation."

The district director having administrative jurisdiction over the place where the alien is located may authorize a stay of deportation on his own instance, or upon a written request of the alien filed with the district director, setting forth under oath the reasons for requesting the stay. The district director may, in his discretion, grant or deny the alien's request. No appeal lies from a denial of a request for a stay. (8 CFR 237.2)

CHAPTER 38

PAROLE OF ALIENS INTO THE UNITED STATES

SECTION.

1. Summary and background.
2. Parole authority under Immigration and Nationality Act.
 - (a) Statutory authority.
 - (b) Congressional intent.
 - (c) Granting of parole.
 - (d) Termination of parole.
3. Extended use of parole authority.
 - (a) Parole of orphans.
 - (b) Parole of Hungarian refugees.
4. Status of paroled alien.

§ 1. **Summary and background.**—The Immigration and Nationality Act, by vesting the Attorney General with discretionary authority to parole into the United States temporarily aliens applying for admission into the United States, gave statutory sanction to a practice which had been employed by the Immigration and Naturalization Service and the Board of Immigration Appeals as an administrative device for more than thirty years.

Before the enactment of the Immigration and Nationality Act, parole had been used in some cases to permit inadmissible aliens to adjust their immigration status where they had entered without, or with improper, documents; to defend criminal prosecution; to testify in criminal cases for the Government; to report for induction in the Armed Forces; or to apply for registry and naturalization and in cases in which an inadmissible alien had no right to appeal. While an administrative device without statutory sanction, the Board of Immigration Appeals described parole as “an extraordinary remedy” which “is not employed indiscriminately.” Its use was reserved for those exceptionally meritorious cases where immediate deportation would be inhumane.¹ The Board also held that parole into the United States of an applicant for admission presupposes that he is inadmissible, otherwise he should be admitted, not paroled.²

§ 2. Parole authority under Immigration and Nationality Act.

(a) **Statutory authority.** The Immigration and Nationality Act gave statutory sanction to the administrative practice of

¹ BIA, *In the Matter of R.*, 3, I. & N. Dec. 45, October 9, 1947.

² BIA, *In the Matter of B.*, 2, I. & N. Dec. 176, July 28, 1944.

paroling aliens into the United States when it vested the Attorney General with discretionary authority to parole into the United States temporarily, under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest, any alien applying for admission to the United States. Parole is not regarded as an admission of the alien. When the purpose of the parole has been served the alien is returned to the custody from which he was paroled, and thereafter his case will be dealt with in the same manner as that of any other applicant for admission to the United States. (Section 212(d) (5))

(b) **Congressional intent.** Congress provided by statute for the Attorney General's parole authority to cope with emergent cases such as the case of an alien who requires immediate medical attention before there has been an opportunity for an immigration officer to inspect him, and in cases where it is strictly in the public interest to have an inadmissible alien present in the United States, such as a witness or for purposes of prosecution.³

In addition to this contemporaneous legislative history of the parole provision of the Immigration and Nationality Act, the following exchange of views between Representative Michael A. Feighan of Ohio and Representative Francis E. Walter of Pennsylvania on the original intent of this provision is of interest. It took place on March 24, 1960 at hearings on H.J.Res. 397, proposing that refugees be paroled into the United States, rather than admitted as immigrants after having qualified for immigrant visas:⁴

"Mr. FEIGHAN. I just want the record to show that I believe the parolee section of our permanent immigration law should not be used on a permanent basis. It was set up in the first instance strictly on the basis of a provision for an emergency. At that time the idea of an emergency in the minds of the Joint Committee on Immigration and Nationality of the House and Senate was no more than, as a maximum, 4,000 that probably would be the number on a ship in distress, such as the *Andrea Doria* which subsequently was sunk. It seems to me that we should approach this problem straightforwardly and not take an approach that I think is a backdoor approach. It is not facing the problem of immigration directly. I say this because we have safeguards in the immigration and nationality law with reference to security, health, and other requirements, and if we permit these people to come in and then try to go through the security and other provisions that have already been written into the law, I think we are making a mistake.

³ Senate Report No. 1137, 82nd Congress, Second Session, p. 13 and House Report No. 1365, 82nd Congress, Second Session, p. 52.

⁴ The provisions of H.J.Res. 397 became part of the Act of July 14, 1960, Public Law 86-648 (74 Stat. 504); see ch. 51.

"It is also a moot question as to whether those who come in and have come in on a parole status would have an opportunity to proceed in court in the same way as those admitted under the normal provisions for the Immigration and Nationality Act.

"Mr. WALTER. Of course Mr. Feighan was on that joint committee and he remembers full well the estimation of the 4,000. We discussed this at great length, and I think anticipated one of the earlier cases with which we were trying to be able to cope. As you know, the drafting of the Immigration and Nationality Act was a five-year job—and we spent many days discussing this phase. Mr. Feighan is dead right; but this is precisely the kind of situation which I feel warrants the use of the parole provision."⁵

(c) Granting of parole. The parole authority vested by law in the Attorney General is delegated by regulations to the district director of the Immigration and Naturalization Service having administrative jurisdiction over the port of entry.

Regulations provide that the district director may parole into the United States temporarily "any alien applicant for admission . . . under such terms and conditions, including the exaction of a bond on Form I-352, as such officer shall deem appropriate." The parole may take place:

- (1) prior to examination by an immigration officer; or
- (2) subsequent to the examination pending a final determination of admissibility; or
- (3) after a finding of inadmissibility has been made.

(d) Termination of parole. Parole will be terminated upon written notice to the alien under the following circumstances:

- (1) at the expiration of the period of time for which the alien was paroled; or
- (2) upon accomplishment of the purpose for which parole was authorized; or
- (3) when neither emergency nor public interest warrants the continued presence of the alien in the United States.

When parole is terminated the alien will be restored to the status which he had at the time of parole, and further inspection or hearing will be conducted or any order of exclusion and deportation previously entered will be executed. (8 CFR 212.5)

§ 3. Extended use of parole authority.—The termination of authority for the issuance of special nonquota immigrant visas under the Refugee Relief Act led to the use of the parole authority by the Attorney General in two distinct groups of cases.

⁵ Hearings before Subcommittee No. 1 of the House Judiciary Committee, 86th Congress, on H.J. Res. 397, 1960, p. 45.

(a) **Parole of orphans.** When, on September 26, 1956, the 4,000 special nonquota immigrant visas authorized for orphans by Section 5 of the Refugee Relief Act were exhausted, it appeared that a considerable number of children had been adopted, principally by members of the armed forces and other government employees stationed abroad who, due to the oversubscription of the quotas to which they were chargeable and the absence of special legislation, could not be issued immigrant visas. Eight hundred and thirty-nine such orphans were paroled into the United States by the Immigration and Naturalization Service up to January 31, 1957, after it had been established that each of these orphans met the criteria for a visa under the Refugee Relief Act but could not be issued one solely because of unavailability of a number. They were paroled to their adoptive or prospective adoptive parents under the provisions of Section 212(d) (5) pending possible enactment of legislation granting permanent resident status. Congress concurred in this practice and provided the necessary authority for the Attorney General to adjust the status of these children to that of aliens lawfully admitted for permanent residence. (Section 4(d), Act of September 11, 1957)⁶

(b) **Parole of Hungarian refugees.** Responding to the sudden unexpected emergency created by Hungarian nationals fleeing from Communist persecution while Congress was not in session in October 1956, the President requested the Attorney General to exercise his parole authority under Section 212(d) (5) in behalf of these Hungarian nationals. Through April 14, 1958, 31,911 Hungarian nationals were paroled into the United States.⁷ This use of the parole procedure, which was terminated by Presidential Directive on December 31, 1957, has been the subject of controversy. In his report of January 1, 1957, to the President on the needs of the Hungarian refugees, the Vice President took issue with the suggestion that the whole problem of refugees from Communist countries could be handled adequately under the parole provisions of the present act. He referred to a statement by the Attorney General that neither he nor any other administrative official should have unlimited authority to admit aliens to the United States on a parole basis and urged that the circumstances and the limits under which parole should be applied in the future should be spelled out by the Congress. He observed that the parole power, if arbitrarily used, could completely circumvent the basic purposes and objectives of the immigration law.⁸

⁶ 71 Stat. 640; see also House Report No. 1199, 85th Congress, First Session, pp. 5, 6.

⁷ Senate Report No. 1817, 85th Congress, Second Session.

⁸ Department of State Bulletin of January 1, 1957, pp. 96 and 97.

The Commission on Government Security, in its report dated June 21, 1957, to the President and the Congress, took the view "that Congress never intended that the parole provision should be used for implementation of the Nation's foreign policy" and appended a formal opinion of its general counsel to the effect that the admission of Hungarian refugees was "not validly authorized under the parole provision of the Immigration and Nationality Act."⁹

The views of the Department of Justice concerning the use of the parole authority were again expressed by the Deputy Attorney General in a letter of April 3, 1957, to Senator Case who, on March 22, 1957, had urged the Attorney General to use his parole powers for the admittance of Egyptian Jews forced to flee as a result of persecution by the Egyptian government. Pointing out that the parole authority was exercised in behalf of Hungarian nationals in response to "a sudden, unexpected emergency which arose while there was no Congress in session" the Deputy Attorney General stated that "it is the position of the Department (of Justice) that the extension of the parole provisions of the Immigration and Nationality Act to national or racial groups other than Hungarians must await the action of Congress on the pending legislation and on the general problem of refugees located in the various countries of the world."¹⁰

§ 4. **Status of paroled alien.**—The effect of parole on an alien's status in the United States has been the subject of a series of court decisions, before and after parole was given statutory sanction. In the case of an excluded alien who, pending her deportation, was paroled to a private relief organization, Mr. Justice Holmes equated parole with detention:

"... while she was at Ellis Island she was to be regarded as stopped at the boundary line and kept there unless and until her right to enter should be declared. When her prison bounds were enlarged by committing her to the custody of the Hebrew Society the nature of her stay within the territory was not changed. She was still in theory of law at the boundary line and had gained no foothold in the United States."¹¹

The Supreme Court, in a recent decision, divided 5 to 4, reaffirmed this view when it held that the parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are con-

⁹ Report of the Commission on Government Security, pursuant to Public Law 304, 84th Congress, as amended, pp. 585 and 587.

¹⁰ Press release from the office of Senator Clifford P. Case, April 17, 1957.

¹¹ Kaplan v. Todd (1925), 267 U. S. 228, 69 L. ed. 585, 45 Sup. Ct. 257.

ducted, and that it was never intended to affect an alien's status as an excluded alien.¹²

The United States Court of Appeals for the Second Circuit distinguished the status of a Hungarian refugee, paroled into the United States as a result of the Communist persecution in 1956, when it found that he "was invited here pursuant to the announced foreign policy of the United States. . . ." The tender of such an invitation and its acceptance changed the alien's status sufficiently to entitle him to the protection of our Constitution. By reason of the circumstances under which the Hungarian refugees were paroled into the United States the Court held the case before it *sui generis* and the appellant entitled to a hearing prior to the revocation of his parole.¹³ The Court further held that, in order to bring the parole provision of Section 212(d) (5) into harmony with the Constitution, a hearing is required prior to the revocation of parole when this section is applied to persons situated in the United States as was appellant in the case at bar.¹⁴

Meanwhile, the Act of July 14, 1960¹⁵ gave the Attorney General authority until July 1, 1962 to parole into the United States certain refugees.¹⁶ The courts will have to decide whether, like the Hungarian refugees, aliens paroled under this authority are to be considered invitees of the United States and therefore within the purview of *Paktorovics v. Murff*.

¹² *Leng May Ma v. Barber* (1958), 357 U. S. 185, 2 L. ed. (2d) 1246, 78 Sup. Ct. 1072.

¹³ *United States ex rel. Paktorovics v. Murff*, 260 Fed. (2d) 610 (C.C.A. 2, (1958)).

¹⁴ The Board of Immigration Appeals stressed the limitation of *Paktorovics v. Murff* to aliens brought to this country as invitees of the United States Government when it found no error in the failure to accord a Cuban applicant for admission a hearing in respect to the revocation of parole. (*In the Matter of M.B.*, Interim Decision 1013, July 2, 1959)

¹⁵ Sections 1 to 4 (74 Stat. 504).

¹⁶ See ch. 51.

PART VI
ALIENS IN THE UNITED STATES

CHAPTER 39

ADJUSTMENT OF STATUS OF ALIENS IN THE UNITED
STATES TO PERSONS ADMITTED FOR
PERMANENT RESIDENCE

SECTION.

1. History.
2. Statutory requirements for adjustment of status.
3. Aliens ineligible for adjustment.
4. Exercise of discretionary authority—Good moral character.
5. Determination of visa availability.
 - (a) Rule.
 - (b) Interpretation.
6. Determination of quota chargeability—Quota chargeability of members of family.
7. Determination of nonquota or preference quota status.
8. Relief from inadmissibility.
 - (a) Waiver of inadmissibility.
 - (1) Waiver in defector cases.
 - (2) Waiver for certain close relatives.
 - (b) Retroactive waiver of inadmissibility.
 - (1) Waiver of documentary requirement.
 - (2) Waiver of other inadmissibility.
9. Application for adjustment.
10. Medical examination.
11. Procedure leading to decision.
12. Adjustment of status of certain foreign government officials.

§ 1. History.—Before the enactment of the Immigration and Nationality Act in 1952 there was no specific statutory authority permitting an alien in the United States as a nonimmigrant or without legal status to acquire the status of a permanent resident alien. Only aliens subject to deportation could, under certain circumstances, become aliens admitted for permanent residence; others had to leave the United States and apply for visas at an American consular office abroad unless they became beneficiaries of a private act of Congress extending to them the privilege of remaining in the United States permanently.

A number of years before the enactment of the Immigration and Nationality Act the Immigration and Naturalization Service, on a regulatory basis, instituted the so-called Canadian pre-examination procedure. Under it the Service permitted certain aliens intending to apply for immigration visas to an American

consular officer in Canada to be preexamined by officers of the Service for the purpose of determining in advance their admissibility into the United States for permanent residence when in possession of an unexpired immigration visa. An alien successfully preexamined was issued by the Service documentation guaranteeing the Canadian Government that the alien would be able to reenter the United States even if an immigration visa were denied to him. The qualification requirements for preexamination were modified at various times. Citizens of Canada and Mexico and of islands adjacent to the United States were ineligible for preexamination. Other aliens could benefit only if they had been in the United States for a stated period of time before applying for preexamination.¹

The Immigration and Nationality Act for the first time made statutory provision for nonimmigrants in the United States to adjust their status to that of aliens lawfully admitted for permanent residence without leaving the country and obtaining an immigrant visa at an American consular office abroad. (Section 245) This change-of-status procedure was intended to take the place of the Canadian preexamination procedure.²

The change-of-status procedure as originally enacted in 1952, however, was narrowly drawn and benefited only aliens who entered as *bona fide* nonimmigrants and who, until the time they applied for change of status, had maintained lawful status. The procedure was available to nonquota immigrants only if they were the spouses or children of United States citizens and had been in the United States for at least one year before acquiring that status. Thus, other nonquota immigrants and aliens who had violated their nonimmigrant status since coming to the United States could not change their status while in the United States. As a result, the Immigration and Naturalization Service, by regulations, reinstated the preexamination procedure.³

A subcommittee of the House Judiciary Committee recommended in 1955 that the change-of-status procedure be broadened so as to obviate the need for the Canadian preexamination procedure.⁴ This recommendation was implemented by the enactment of the Act of August 21, 1958,⁵ which amended Section 245. The amendment significantly broadened the change-of-status procedure by making it available to nonquota immi-

¹ For example see 8 CFR 142.1 (1949 Edition).

² Senate Report No. 1137, 82nd Congress, Second Session, p. 26.

³ See 8 CFR 235a (1956 Supplement).

⁴ House Report No. 1570, 84th Congress, First Session.

⁵ Public Law 85-700 (72 Stat. 699).

grants, other than natives of contiguous countries or adjacent islands, and by eliminating the requirement that the applicant must have maintained his nonimmigrant status until he applied for change of status. The requirement that the alien must have been admitted as a *bona fide* nonimmigrant remained in effect. As a result of this amendment the Immigration and Naturalization Service terminated the preexamination procedure.⁶

An additional amendment of Section 245 by the Act of July 14, 1960⁷ further liberalized the change-of-status procedure by making eligible for it aliens who were inspected at the time of entry or paroled, irrespective of whether they were at that time *bona fide* nonimmigrants or in possession of visas.

According to a report of the House Judiciary Committee the necessity for the amendment arose from a decision by the Attorney General of November 20, 1959,⁸ which, the Committee felt, would not only necessitate the reinstatement of the preexamination procedure but would also increase the number of private bills.⁹ In this decision the Attorney General ruled that an alien who is chargeable to an oversubscribed quota, in view of the language of the statute then in effect,¹⁰ was not eligible for adjustment of status regardless of the fact that he had reached his turn on the quota waiting list.

The amendment not only achieved the Committee's objective but, as described above, went much further in liberalizing the statutory conditions for change of status in the United States.¹¹

§ 2. Statutory requirements for adjustment of status.—The status of an alien in the United States may, in the discretion of the Attorney General, be adjusted to that of an alien lawfully admitted for permanent residence if he meets the following statutory requirements:

- (a) he was inspected and admitted or paroled into the United States;
- (b) he makes application for the adjustment;

⁶ CFR 235a, as amended on October 30, 1958, 23 Fed. Reg. 8395.

⁷ Section 10, Public Law 86-648 (74 Stat. 505).

⁸ 41 Op. Atty. Gen. No. 77.

⁹ House Report No. 1202, 86th Congress, Second Session, pp. 3-6.

¹⁰ "A quota immigrant visa shall be considered immediately available for the purposes of this subsection only if the portion of the quota to which the alien is chargeable is undersubscribed by applicants registered on a consular waiting list." (Section 245(a), second sentence, 66 Stat. 217)

¹¹ See also Senate Report No. 1651, 86th Congress, Second Session, pp. 3, 17.

(c) he is eligible to receive an immigrant visa and is admissible into the United States for permanent residence; and

(d) an immigrant visa is immediately available to him at the time his application is approved. (Section 245, as amended)¹²

§ 3. Aliens ineligible for adjustment.—The following classes of aliens are ineligible for adjustment of status:

(a) Natives of any country contiguous to the United States, or of any adjacent island named in Section 101(b)(5);¹³

(b) Crewmen;¹⁴

(c) Aliens who have had the status of exchange visitors in the United States unless they have resided abroad in a co-operating country for at least two years following their departure from the United States or the Secretary of State has recommended that the two-year period be waived;¹⁵

(d) Foreign government officials, treaty traders, and international organization aliens, unless they submit a written waiver of all rights, privileges, exemptions, and immunities which would otherwise accrue to them because of their status.¹⁶ (Section 245(a), as amended, and 8 CFR 245.1)

§ 4. Exercise of discretionary authority—Good moral character.—In addition to the foregoing statutory requirements, the Immigration and Naturalization Service requires administratively that an applicant for change of status establish good moral character for the five years preceding the filing of his application "as a reasonable and proper basis, among others, for determining whether the Attorney General's discretion shall be exercised in a particular case."¹⁷ In determining whether an

¹² 66 Stat. 217, 72 Stat. 699, 74 Stat. 505.

¹³ The term "contiguous territory" refers to Canada and Mexico. The term "adjacent islands" includes St. Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French and Netherlands territory or possessions in or bordering on the Caribbean Sea. (§ 101(b)(5)) It has been determined administratively that British Honduras is to be considered an "adjacent island."

¹⁴ Immigration regulations include in this term an alien who, on arrival in the United States, was either serving in any capacity on board a vessel or aircraft or was destined to join a vessel or aircraft in the United States to serve in any capacity thereon. (8 CFR 245.1)

¹⁵ See ch. 23, § 10 and ch. 33, § 28.

¹⁶ See ch. 14, § 13 and ch. 41.

¹⁷ Regional Commissioner, *In the Matter of H.R.*, 7, I. & N. Dec. 651, February 18, 1958; approved by Assistant Commissioner. In the exercise of discretion the Service denied the application for adjustment of status by an alien who, after having twice

applicant has established good moral character for the required period the Service will give consideration to the standards set forth in the statutory definition of the term "good moral character"¹⁸ but is not bound by them inasmuch as the requirement is not a statutory one.¹⁹

§ 5. Determination of visa availability.

(a) **Rule.** An alien is eligible for adjustment of status only if "an immigrant visa is immediately available to him at the time his application is approved." Inasmuch as in change-of-status proceedings an immigrant visa is not issued, the statutory language "if an immigrant visa is immediately available" has been equated with the availability of a quota number in the case of quota immigrants and the approval of an appropriate petition in the case of nonquota and preference quota immigrants.

The determination of whether a quota number is available at the time of adjustment of status is made by the Immigration and Naturalization Service by inquiry to the Department of State in each individual case. If a number is available and the applicant is otherwise qualified for adjustment, his application is granted and the Department of State reduces by one the quota of the quota area to which the alien is chargeable. (Section 245(b))

(b) **Interpretation.** The determination that an immigrant visa is immediately available to the applicant at the time his application is approved may be based on one of two findings:

- (1) that the portion of the quota to which the alien is chargeable is undersubscribed by applicants registered on a quota waiting list; or

been found ineligible for an immigrant visa by an American consul in Germany, obtained a nonimmigrant visa in Mexico purporting to visit a friend in the United States at a fictitious address and who, immediately after entry, was married to a United States citizen. (Regional Commissioner, *In the Matter of C.*, Interim Decision 1073, June 16, 1960; approved by Assistant Commissioner, June 21, 1960) Administrative decisions relating to the prior requirement that the applicant must have been admitted as a *bona fide* nonimmigrant are not discussed here in view of the elimination of this requirement by the Act of July 14, 1960. Application under Section 245 was denied as a matter of discretion to an alien who married a United States citizen in 1959, who had previously testified that he was married and that his wife and child resided in Poland, and who then stated that his prior testimony covering his marital status was false. Since the applicant, by his own sworn testimony, has cast serious doubt on his credibility he has the burden of clarifying his true marital status and of establishing that his case merits favorable consideration. The Service has consistently held that the extraordinary discretionary relief provided by Section 245 will only be granted in meritorious cases. (Regional Commissioner, *In the Matter of G.*, Interim Decision 1093, approved by Assistant Commissioner, August 24, 1960)

¹⁸ See ch. 5, § 3(d).

¹⁹ Assistant Commissioner, *In the Matter of F.*, Interim Decision 940, July 7, 1958.

(2) that his turn on the quota waiting list of an over-subscribed quota has been reached.

In determining whether the applicant meets either of these two requirements, the Immigration and Naturalization Service first has to determine the proper quota chargeability of the alien and then to verify whether the portion of the quota to which the alien is chargeable is currently available or over-subscribed. In the latter case the alien's priority of registration determines whether his turn on the quota waiting list has been reached. The Immigration and Naturalization Service makes this determination by referring a copy of the alien's application form to the American consular office at which the applicant has previously been registered. The consular office will certify to the Immigration and Naturalization Service the alien's priority of registration in the light of the generally applicable rules.²⁰

In this connection the following statement by the Senate Judiciary Committee in reporting on the amendment to Section 245 contained in the Act of July 14, 1960 is of interest:

"The committee is aware that under the visa regulations of the Department of State that [sic] an alien who is registered on a quota waiting list as an intending immigrant will be issued a visitor's visa if he shows that he has to enter the United States temporarily to attend a business conference, to undergo medical treatment not otherwise available, or to attend to other urgent personal business. In order to prevent abuse by *mala fide* nonimmigrants, existing visa regulations require that the name of such an alien be taken off the quota waiting list if he willfully violates his nonimmigrant status while in the United States (22 CFR 42.22(a)(2)).²¹ For example, an alien's name will be removed from the quota waiting list if he was issued a visitor visa to attend a business conference, but while in the United States accepted local employment or overstayed the period of time of his admission.

"It is not intended that the enactment of this proposed legislation would have the effect of repealing the visa regulations in this regard. It is intended that only those aliens who enter the United States in good faith and without any intention of circumventing quota restrictions of the Immigration and Nationality Act, or any other law relating to immigration shall be entitled to the benefits of section 245(a), as amended."²²

§ 6. Determination of quota chargeability—Quota chargeability of members of family.—The determination to which quota the applicant is chargeable is of crucial importance in change-of-status proceedings as it depends on this finding whether the

²⁰ See ch. 14, §§ 3-6.

²¹ Since August 15, 1960 contained in 22 CFR 42.66(a)(7). (25 Fed. Reg. 7521, August 10, 1960)

²² Senate Report No. 1651, 86th Congress. Second Session, p. 27.

applicant is chargeable to an undersubscribed quota or to an oversubscribed quota; and in the latter case calls for a determination of whether the alien is properly registered on a quota waiting list and whether his turn has been reached.²³ In determining the applicant's quota chargeability, the same general rule applies as in the case of an alien applying for an immigrant visa and admission to the United States.²⁴

The determination of quota chargeability in change-of-status proceedings presents peculiar problems in the case of the husband, wife or children of a spouse or parent who has obtained an immigrant visa abroad or has himself applied for change of status or has already changed his status to a permanent resident alien while in the United States.

The Immigration and Naturalization Service has held that the Italian born wife of a Swiss alien who acquired permanent resident status through change-of-status proceedings in 1956 may derive Swiss quota chargeability from her husband as "accompanying him"²⁵ in change-of-status proceedings in 1959.²⁶

By analogy it would follow that the same derivation of quota chargeability would be available if the principal alien from whom the spouse wishes to derive quota chargeability was admitted to the United States as an immigrant, or if the principal applicant applies for change of status concurrently with the applicant who wishes to derive quota chargeability. For example, a Greek born wife applying for change of status appears chargeable to the quota of her British born husband if he was admitted to the United States as an immigrant or if he applies simultaneously with his wife for change of status. This rule does not apply in the case of a spouse who is an Asian person.²⁷ However, the rule does apply in the case of a child who wishes to derive quota chargeability from an "accompanying" parent irrespective of the child's ancestry.²⁸ For example, if a child has a Chinese mother and a British father born in Great Britain, whom he is "accompanying" in change-of-status proceedings, he may be charged to the British quota while the mother of the child remains chargeable to the Chinese quota.²⁹

²³ See § 5, *supra*.

²⁴ See ch. 9.

²⁵ See ch. 9, § 1(c).

²⁶ Regional Commissioner, *In the Matter of N.*, Interim Decision 1017, June 8, 1959, approved by Assistant Commissioner.

²⁷ For the rules of derivation of nonquota status and quota chargeability in the case of Asian persons see ch. 10, §§ 3, 4 and 5(b).

²⁸ See ch. 10, § 5(a).

²⁹ When § 245, as originally enacted, excluded from its benefits natives of independent countries of the Western Hemisphere the Service held that a child born

§ 7. Determination of nonquota or preference quota status.— If an applicant for adjustment of status claims nonquota status as a child or spouse of a United States citizen³⁰ or as a minister of religion,³¹ or preference quota status in one of the preference quota categories,³² the required petition according the nonquota or preference quota status must be filed concurrently with application Form I-485 unless the petition has already been approved. (Instructions, Form I-485)

If nonquota status or preference quota status is derived from a principal whom the applicant accompanies or follows to join, without the necessity of a petition such as in the case of the spouse or child of a minister of religion³³ or of a skilled alien,³⁴ it would seem to be consistent with the general legislative intent to permit such an alien to derive nonquota or preference quota status from a principal applicant also in change-of-status proceedings. For example, if a skilled alien who was admitted to the United States as a first preference quota immigrant has in the United States a child in student status, this child appears qualified to apply as a first preference quota immigrant who is following to join his parent. Similarly, if an alien wife in the United States as a temporary worker is followed by her husband who is admitted as a minister of religion entitled to nonquota status, the alien wife would appear qualified to apply for change of status as a nonquota immigrant.

§ 8. Relief from inadmissibility.

(a) Waiver of inadmissibility.

(1) Waiver in defector cases. The Service has held that a "defector" finding,³⁵ irrespective of the language of the statute requiring independent findings by a consular officer and the Attorney General, may be made in change-of-status proceedings although no such finding was made by the consular officer.³⁶

in Venezuela who resided as a nonimmigrant with his Netherlands born parents in the United States may be charged to the Netherlands quota of his parents in order to prevent his separation from them, applying the rule of § 202(a)(1). See ch. 9, § 1(b). (Central Office, *In the Matter of J.*, 5, I. & N. Dec. 750, April 20, 1954)

³⁰ See ch. 7, § 2.

³¹ See ch. 7, § 8.

³² See ch. 11, §§ 2-5.

³³ See ch. 7, § 8.

³⁴ See ch. 11, § 2.

³⁵ See ch. 33, § 25(d).

³⁶ Assistant Commissioner, *In the Matter of P.*, Interim Decision 1025, April 13, 1959. For a similar holding by the Board in deportation proceedings see *Matter of V.*, Interim Decision 1053, February 8, 1960.

(2) **Waiver for certain close relatives.** If an applicant who is inadmissible for criminal or immoral grounds, for fraud or misrepresentation, or because of his affliction with tuberculosis, qualifies as a close relative of a United States citizen or of a permanent resident alien for a waiver of these disqualifications under Section 5, 6 or 7 of the Act of September 11, 1957,³⁷ the waiver may be granted in change-of-status proceedings. (8 CFR 245.1)³⁸

(b) **Retroactive waiver of inadmissibility.** As in deportation proceedings,³⁹ the Immigration and Naturalization Service has ruled that certain discretionary authority of the Attorney General to admit otherwise inadmissible aliens may be exercised in change-of-status proceedings *nunc pro tunc*, i.e., after the alien's entry into the United States, effective retroactively to the time of his entry.

(1) **Waiver of documentary requirement.** If it is found that an applicant's failure to present a valid passport or a valid nonimmigrant visa at the time of his arrival at a port of entry was the result of an unforeseen emergency the Service will waive the documentary requirements under the authority contained in Section 212(d) (4) (A).⁴⁰

(2) **Waiver of other inadmissibility.** In cases in which an alien's inadmissibility was not revealed when he was admitted as a nonimmigrant, the Service, in change-of-status proceedings, cured the defective entry by the exercise of the Attorney General's authority to admit otherwise inadmissible nonimmigrants under Section 212(d) (3) (B).⁴¹

§ 9. Application for adjustment.—Application for adjustment is filed with the district director of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence. The application is made on Form I-485, "Application for Status as Permanent Resident," in one copy. It must be accompanied by two photographs, evidence of the alien's

³⁷ See ch. 34, § 3.

³⁸ Regional Commissioner, *In the Matter of M.*, Interim Decision 990, March 5, 1959, approved by Assistant Commissioner, March 20, 1959.

³⁹ See ch. 45, § 2(d).

⁴⁰ See ch. 29, § 11. Where an alien in 1953 voluntarily enlisted in the United States Navy in the Philippines and could reasonably have expected to be sent to this country and had ample opportunity to obtain documents his failure to present them was not considered the result of an unforeseen emergency and a *nunc pro tunc* documentary waiver was denied. (Assistant Commissioner, *In the Matter of V.*, Interim Decision 1029, November 24, 1959)

⁴¹ Regional Commissioner, *In the Matter of M.*, Interim Decision 990, *supra* (waiving alien's inadmissibility for conviction for crime) and Assistant Commissioner, *In the Matter of P.*, *supra* (waiving an alien's inadmissibility for prior membership in Communist Party).

status in the United States, and other documentary evidence showing that the applicant meets the requirements of the law. Evidence submitted with the application should include:

- (a) birth record;
- (b) entry permit issued at the time of entry into the United States;
- (c) police record or statement that no police record exists for at least the preceding five years from every city in which the applicant resided for six months or more in the United States or abroad;
- (d) a statement of the applicant's financial resources and sources of income;
- (e) if the alien is claiming nonquota status as the spouse or child of a minister of religion, or first preference quota status as the spouse or child of a skilled alien, for the spouse marriage certificate and proof of termination of prior marriages, and for the child marriage certificate of parents with proof of termination of their prior marriages if this documentation has not yet been submitted by a parent. (Instructions, Form I-485) The fee for the filing of each application for adjustment of status is \$25. (Section 281(4))

§ 10. Medical examination.—Once an application for change of status is accepted by the Immigration and Naturalization Service, the applicant will be requested to submit to a medical examination by an officer of the United States Public Health Service. If the applicant is certified as a person suffering from feeble-mindedness, insanity, epilepsy, narcotic drug addiction, alcoholism, or as a person of psychopathic personality, he may appeal this decision to a board of medical officers of the United States Public Health Service. (8 CFR 245.3)

§ 11. Procedure leading to decision.—An immigration officer will review the application with the applicant and, where indicated, will hear witnesses or have investigations made to establish the alien's qualification.

The immigration officer, upon concluding his investigation, submits the case record with his recommendation to the district director for grant or denial of the application. No hearing is required or provided for in adjustment-of-status proceedings.⁴²

⁴² Where report of neighborhood investigation contains allegations reflecting adversely on applicant's character, applicant will be afforded an opportunity to reply thereto and to submit such additional evidence as he desires to meet his burden of proving good moral character. (Regional Commissioner, *In the Matter of H.R.*, 7, I. & N. Dec. 651, February 18, 1958; approved by Assistant Commissioner)

The district director will either approve or disapprove the recommendation of the immigration officer. If he denies the application the alien is notified in writing of the decision and the reasons leading to the denial. He is also advised of his right to appeal the decision to a regional commissioner of the Immigration and Naturalization Service by filing a notice of appeal on Form I-290B. The notice of appeal must be filed at the office of the district director within ten days of the receipt of the notification of the decision.

On appeal, the regional commissioner may grant or deny the application for adjustment. If he denies the application the alien will be informed in writing by the district director. No appeal lies from the decision of the regional commissioner. (8 CFR 245.1)

§ 12. Adjustment of status of certain foreign government officials.—An alien admitted to the United States as a foreign government official or a member of his immediate family with visa symbol "A-1" or "A-2,"⁴³ or as an international organization alien or a member of his immediate family with visa symbol "G-1" or "G-2,"⁴⁴ who has failed to maintain his status may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

After consultation with the Secretary of State the Attorney General, in his discretion, may approve the application as of the date of the decision if he is satisfied that:

- (a) the applicant is admissible for permanent residence;
- (b) he is a person of good moral character;⁴⁵ and
- (c) the action is not contrary to the national welfare, safety, or security.

The number of aliens who may be granted permanent residence status under this provision may not exceed fifty in any fiscal year. (Act of September 11, 1957)⁴⁶

Application for adjustment of status is to be filed on Form I-485. (8 CFR 245.1)

⁴³ See ch. 18.

⁴⁴ See ch. 19.

⁴⁵ For definition of term "good moral character" see ch. 5, § 3(d).

⁴⁶ Section 13, Public Law 85-316 (71 Stat. 642).

CHAPTER 40

ESTABLISHMENT OF RECORD OF LAWFUL ADMISSION

SECTION.

1. Summary.
2. Application and fee.
3. Qualitative requirements—Regulatory and administrative interpretations.
 - (a) Continuity of residence.
 - (b) Waiver of inadmissibility.
 - (c) No record of lawful admission.
 - (d) Good moral character.
4. Decision and appeal.
5. Creation of record of lawful admission and its effect.
6. Effective date.
 - (a) Entry before July 1, 1924.
 - (b) Entry on or after July 1, 1924.
7. Rescission.
 - (a) Statutory basis.
 - (b) Procedure.
 - (1) Notice.
 - (2) Admission made or no answer filed.
 - (3) Notice contested.
 - (4) Decision by regional commissioner.
 - (c) Effect of rescission.
8. Historical background.

§ 1. Summary.—An alien in the United States who entered before June 28, 1940, and concerning whom no record of admission is otherwise available, may apply to have a record of lawful admission for permanent residence made, and thereby legalize his stay in the United States, if he can show that he:

(a) has had his residence in the United States continuously since his entry before June 28, 1940;

(b) is a person of good moral character;

(c) is not ineligible to citizenship; and

(d) is not inadmissible under Section 212(a) insofar as it relates to criminals, procurers, and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens. (Section 249, as amended by the Act of August 8, 1958)¹

§ 2. Application and fee.—Application to create a record of admission for permanent residence is filed on Form I-485 with

¹ See ch. 5, § 3(b) and (d) for definition of terms "residence" and "good moral character"; and ch. 33, § 19(a) for definition of term "ineligible to citizenship."

the district director of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence. The application must be accompanied by two photographs and documentary evidence showing that the applicant entered the United States before June 28, 1940 and has resided continuously in the United States.

The applicant must also submit affidavits of witnesses who have personal knowledge of the continuity of his residence in the United States. Also required are police records for at least the preceding five years for every city in which the applicant has resided for six months or more in the United States. (8 CFR 249.1 and Instructions, Form I-485)

The fee for the creation of a record of admission is \$25 and must accompany the application. (Section 281(4) and Instructions, Form I-485)

§ 3. Qualitative requirements—Regulatory and administrative interpretations.—In determining whether an applicant for the creation of a record of lawful admission meets the statutory requirements listed in Section 1, the following regulatory and administrative interpretations are to be considered:

(a) **Continuity of residence.** While the statute requires that the applicant "has had his residence in the United States continuously" since his entry before June 28, 1940, the Immigration Service has held that a temporary absence from the United States will not break the continuity of residence.² However, the same decision held that a departure from the United States as a result of exclusion or deportation proceedings breaks the continuity of the alien's residence regardless of the period of time he is outside the United States. The Service also held that mere temporary admissions as a nonimmigrant crewman over a period of years do not establish "continuous residence" in the United States within the meaning of the statute.³

(b) **Waiver of inadmissibility.** As stated in Section 1, the statute requires that an applicant "is not inadmissible under Section 212(a) in so far as it relates to criminals, procurers, and other immoral persons . . ." Immigration regulations, however, provide that an alien who is inadmissible as a criminal

² Regional Commissioner, *In the Matter of P.*, Interim Decision 976, October 16, 1958; approved by Assistant Commissioner. An alien who has resided in the United States since 1921 is entitled to have a record of lawful admission created as of the date of his entry in 1921 notwithstanding subsequent unlawful reentries without inspection in 1924 and 1930. (Assistant Commissioner, *In the Matter of L.F.Y.*, Interim Decision 1060, March 9, 1960)

³ Assistant Commissioner, *In the Matter of S.J.S.*, Interim Decision 1027, October 20, 1959.

under Section 212(a) (9) or (10) or as an immoral person under Section 212(a) (12) may be granted a waiver of these grounds of inadmissibility under the provisions of Section 5 of the Act of September 11, 1957 and thereby become eligible for the creation of a record of lawful admission. (8 CFR 249.1)⁴

A finding of inadmissibility under one of the provisions of Section 212 not specifically referred to in Section 249 does not preclude favorable action on the alien's application. Consequently, a finding of inadmissibility under Section 212(a) (19) for securing a visa by fraud does not result in the alien's ineligibility for adjustment of status under Section 249.⁵

(c) **No record of lawful admission.** The statutory condition that a record of lawful admission for permanent residence may be established only "if no such record is otherwise available" is met when a record of an unlawful entry exists.⁶ The existence of a record of lawful admission for permanent residence in 1928 does not preclude adjustment of status if the alien's immigration status became unlawful as a result of illegal re-entry in 1954.⁷

(d) **Good moral character.** The statute requires that the applicant establish that he "is a person of good moral character" without specifying the period of time for which good moral character must be established. In determining whether an applicant meets this requirement, the standards set forth in Section 101(f)⁸ are considered along with other factors.⁹

§ 4. **Decision and appeal.**—The applicant is notified of the district director's decision. If the application is denied the alien is given the reasons for the denial and informed that, within fifteen days after the mailing of the notification, he may appeal to the regional commissioner by filing Form I-290B, "Notice of Appeal." The regional commissioner may grant or deny the application. No appeal lies from his decision. (8 CFR 249.1 and 8 CFR 103.3)

§ 5. **Creation of record of lawful admission and its effect.**—If the application for creation of a record of lawful admission is granted, either by action of the district director or the regional commissioner, the alien is issued Alien Registration Receipt Card Form I-151, showing that he has acquired the

⁴ See ch. 34, § 3(a) for discussion of § 5 of Act of September 11, 1957.

⁵ Assistant Commissioner, *In the Matter of S.*, Interim Decision 1022, March 9, 1959.

⁶ Assistant Commissioner, *In the Matter of S.*, *supra*.

⁷ Assistant Commissioner, *In the Matter of R.*, Interim Decision 1059, March 9, 1960.

⁸ See ch. 5, § 3(d).

⁹ Regional Commissioner, *In the Matter of P.*, *supra*.

status of an alien lawfully admitted for permanent residence. Form I-151 will be issued to the applicant only after he surrenders any other document in his possession showing that he complied with the registration requirement of former or existing law. (8 CFR 249.1)

The creation of a record of lawful admission for permanent residence is considered, for purposes of reentry, a waiver of all known grounds of inadmissibility if the alien retains the status accorded him, and no new ground of inadmissibility arises.¹⁰

§ 6. **Effective date.**—The effective date of a record of lawful admission made under the procedure described above depends on the date of entry of the applicant:

(a) **Entry before July 1, 1924.** If the applicant entered before July 1, 1924, the record of lawful admission is established as of the date of such entry;

(b) **Entry on or after July 1, 1924.** If the applicant entered on or after July 1, 1924, the record of lawful admission is established as of the date of the approval of his application. (Section 249, as amended by the Act of August 8, 1958)

§ 7. **Rescission.**

(a) **Statutory basis.** If within five years after the establishment of a record of lawful admission it appears to the satisfaction of the Attorney General that the applicant was not, in fact, eligible for this action, he is required to rescind the action. (Section 246(a))¹¹

(b) **Procedure.**

(1) **Notice.** Under immigration regulations, the district director of the district in which a person resides who appears not to have been eligible for the establishment of a record of lawful admission will have a notice served on him stating the grounds on which it is intended to rescind the action. Within thirty days from the day of service, the affected person may answer in writing why the rescission should not be made. He may also appear in person and may be represented by counsel and examine the evidence. (8 CFR 246.11)

¹⁰ Assistant Commissioner, *In the Matter of S.*, *supra*; see also *Matter of L.F.Y.*, *supra*.

¹¹ Where an alien was not eligible for adjustment of status which she obtained under Section 249 of the act, and she subsequently entered the United States with a border-crossing card issued to her pursuant to such adjustment, she will not be found deportable on the charge that she was not in possession of a valid entry document. The proper method of challenging her status is to institute rescission proceedings under Section 246. (BIA, *In the Matter of V.*, 7, I. & N. Dec. 363, December 6, 1956)

(2) **Admission made or no answer filed.** If the answer admits the allegations in the notice or if no answer is filed within the thirty-day period, the district director rescinds the establishment of the record of lawful admission. No appeal lies from such decision. (8 CFR 246.12(a))

(3) **Notice contested.** If the alien contests the allegations made in the notice either in writing or by personal appearance, and the district director finds that the action should be terminated he will so inform the alien. If he finds that a rescission should take place, he enters his decision and advises the alien that he may take an appeal from this decision to the regional commissioner. (8 CFR 246.12(b))

(4) **Decision by regional commissioner.** An appeal to the regional commissioner may be taken by filing Form I-290B within fifteen days after the mailing of the notification of decision. The decision by the regional commissioner is final. (8 CFR 246.13)

(c) **Effect of rescission.** Once the establishment of a record of lawful admission is rescinded, the person so affected becomes subject to all provisions of the immigration laws to the same extent as if the adjustment of his status had not been made. (Section 246(a)) Form I-151 must be surrendered to the district director. (8 CFR 246.14)

§ 8. **Historical background.**—Provision for the creation of a record of entry for aliens who entered the United States before July 1, 1924 was first enacted into law on March 2, 1929. It was intended to resolve the problem of aliens in the United States whose records of admission were lost or destroyed or were never created and who, as a result, could not be naturalized while, on the other hand, they could not be deported because of the absence of a ground of deportation or because of the statute of limitations.¹²

This provision was carried forward in Section 328 of the Nationality Act of 1940 and was substantially restated in Section 249 of the Immigration and Nationality Act. According to the Department of Justice, records of admission for permanent residence were created for 297,433 aliens between July 1, 1929 and June 30, 1959.

Section 249, as amended by the Act of August 8, 1958, extended the cut-off date from July 1, 1924 to June 28, 1940, the

¹² See Bernsen, "Acquisition of lawful permanent residence by aliens in the United States," *I. & N. Reporter*, July 1959, p. 3.

date of the enactment of the Alien Registration Act, and enlarged the scope of the provision by permitting discretionary consideration of the adjustment of status of aliens who are subject to deportation on generally technical grounds only.¹³

¹³ House Report No. 1721, 85th Congress, Second Session, p. 2, and Senate Report No. 1905, 85th Congress, Second Session, p. 2. See ch. 51 for creation of record of admission for certain Hungarian refugees.

CHAPTER 41

ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS TO NONIMMIGRANTS

SECTION.

1. Summary.
2. Effect of waiver.
3. Procedure of adjustment of status.
4. Adjustment of status or waiver of immunity.

§ 1. **Summary.**—The status of an alien lawfully admitted for permanent residence who, at the time of his entry has, or subsequently acquires, an occupational status which would entitle him to nonimmigrant status as a foreign government official, treaty trader or investor, or international organization alien, must be adjusted to the appropriate nonimmigrant status unless the alien executes a written waiver of all rights, privileges, exemptions and immunities which would otherwise accrue to him because of his occupational status. (Section 247)

This provision, first enacted in the Immigration and Nationality Act, reflects the view of its drafters "that it is undesirable to have such aliens continue in the status of lawful permanent residents and thereby become eligible for citizenship, when, because of their occupational status, they are entitled to certain privileges, immunities, and exemptions which are inconsistent with an assumption of the responsibilities of citizenship under our laws."¹

§ 2. **Effect of waiver.**—Neither law nor regulations set forth the effect a waiver of all rights, privileges, exemptions and immunities has on the status of an alien who has the occupational status of a foreign government official, treaty trader or investor or international organization alien and who signs the waiver permitting him to retain his status as a permanent resident alien. The Attorney General, referring to the above stated legislative history of the provision, has ruled that in determining whether an occupational privilege or exemption is either retained or lost by an immigrant alien employee of an international organization or foreign mission filing a waiver, the guiding principle is that such alien employee may not retain and assert privileges which he could not obtain were he an American citizen in similar employment. Consequently, exemption from

¹ Senate Report No. 1137, 82nd Congress, p. 26; House Report No. 1365, 82nd Congress, p. 64.

Federal income taxation, which a noncitizen employee of an international organization may claim under Section 893 of the Internal Revenue Code² is waived when he files a waiver under Section 247. Conversely, such a waiver by an immigrant alien employee of the United Nations does not waive immunity from suit and legal process for official acts under Section 7(b) of the International Organizations Immunities Act.³ The Attorney General also ruled that execution of a waiver under Section 247 does not apply to rights, privileges, exemptions, and immunities derived from treaties.⁴

§ 3. Procedure of adjustment of status.—If evidence becomes available to the Immigration and Naturalization Service that an alien lawfully admitted for permanent residence has an occupational status which would require the adjustment of his status to that of a nonimmigrant, the district director having jurisdiction over the alien's place of residence serves a notice on the alien informing him that he may, instead of such adjustment of status, request to be permitted to retain his status by filing with the district director Form I-508, "Waiver of Rights, Privileges, Exemptions and Immunities." (8 CFR 247.11)

Within ten days of receipt of the notice, the alien may either apply to retain his status by executing the waiver or he may answer under oath stating the reasons why his status should not be adjusted. In so doing the alien can request an opportunity to appear in person, and he may be represented by counsel.

If the alien requests a personal interview, his case will be discussed with him by an immigration officer. Such officer will prepare a report on the alien's case either on the basis of a personal interview or on the basis of written evidence and will submit the report to the appropriate district director. If the district director determines that the alien's status should be adjusted, the alien is advised that this action will take place unless he files within ten days a waiver on Form I-508. He is also advised that he may appeal the decision of the district director to a regional commissioner of the Service within ten days from the receipt of notification. (8 CFR 247.12 and 103)

If an appeal is taken, the regional commissioner will make the final decision by finding that the alien's status should or should not be adjusted.

§ 4. Adjustment of status or waiver of immunity.—If a final decision has been rendered that the status of the alien should

² 26 U.S.C. 893, F.C.A. 26 § 893.

³ 22 U.S.C. 288d, F.C.A. 22 § 288d.

⁴ 41 Op. Atty. Gen. No. 25, 1953 and 41 Op. Atty. Gen. No. 27, 1954.

be adjusted, the alien is given ten days from the date of notification within which he may request permission to retain his status as an immigrant by filing Form I-508. If he does not request to be permitted to retain his status within the ten-day period, the district director, without further notice to the alien, changes the alien's status to the appropriate nonimmigrant classification and so advises the alien. Nonimmigrant status is granted for such time and under such conditions as are applicable to the alien's particular nonimmigrant status as a foreign government official, treaty alien or international organization alien. (8 CFR 247.12)

An alien whose status as a permanent resident has been adjusted to that of a nonimmigrant, upon demand, must promptly surrender to the Immigration and Naturalization Service any documents in his possession evidencing his former permanent resident status. (8 CFR 247.14)

CHAPTER 42

CHANGE OF NONIMMIGRANT CLASSIFICATION

SECTION.

1. Summary.
 - (a) Rule.
 - (b) Exceptions.
2. Application for change of nonimmigrant classification.
 - (a) General requirements.
 - (b) Requirements applicable to special groups.
 - (1) Temporary workers and trainees.
 - (2) Exchange visitors.
 - (c) Fee.
3. Decision and appeal.
 - (a) Approval.
 - (b) Denial and appeal.
 - (c) Special procedure for applicants for exchange visitor status.

§ 1. Summary.

(a) **Rule.** Any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status may, with the exceptions listed below, apply for and be granted a change from the particular nonimmigrant classification under which he was admitted to another nonimmigrant classification. (Section 248) For example, an alien admitted as a visitor for business may apply to be classified as a student if he meets the qualifications of this nonimmigrant status; or a visitor for pleasure may, if qualified, apply to be classified as a treaty trader.

(b) **Exceptions.** Change of nonimmigrant status is precluded in the following cases:

(1) The classification of an alien crewman may not be changed in any case (Section 248);

(2) The classification of an alien in bonded transit without visa¹ may not be changed in any case (Section 238(d)); and

(3) The classification of any other alien in transit may be changed only to that of a foreign government official or international organization alien (Section 248);

(4) The classification of an alien as an agricultural worker under the provisions of the Agricultural Act of 1949, as amended,² may not be changed in any case.³

¹ See ch. 27, § 3.

² See ch. 52, § 6(b).

³ Regional Commissioner, *In the Matter of C.*, Interim Decision 1026, July 21, 1957; approved by Assistant Commissioner, December 4, 1959. The regulatory prohibition

§ 2. Application for change of nonimmigrant classification.

(a) **General requirements.** Application for change of nonimmigrant classification must be made on Form I-506 and is to be submitted to the Immigration and Naturalization Service office nearest the applicant's place of residence in the United States. A separate application must be executed for each applicant. However, applications from a family unit may be supported by the same documentary evidence if practicable. With the application is to be submitted evidence of the alien's admission as a nonimmigrant and any other documentary evidence establishing that he is maintaining his nonimmigrant status and is eligible for the reclassification requested. The applicant must also submit the original of any temporary entry permit in his possession, usually Form I-94. (8 CFR 248.2 and Instructions, Form I-506)

(b) Requirements applicable to special groups.

(1) **Temporary workers and trainees.** In the case of a nonimmigrant who applies for change of classification to that of a temporary worker or trainee, the application must be accompanied by application Form I-129B, "Petition for Permission to Import Nonimmigrant Aliens," prepared by the alien's prospective employer or trainer. (8 CFR 248.3)

(2) **Exchange visitors.** In the case of a nonimmigrant who applies for a change of classification to that of an exchange visitor, the application must be accompanied by Form DSP-66, "Certificate of Eligibility for Exchange Visitor Status," executed by the sponsor and the prospective exchange visitor. (22 CFR 63.5(a))

(c) **Fee.** The fee for the filing of each application for change of nonimmigrant classification is \$25. (Section 281(4))

§ 3. Decision and appeal.

(a) **Approval.** The applicant is notified of the district director's decision. If the application is granted, the alien's new nonimmigrant status is subject to the terms and conditions

against the change of nonimmigrant classification in the case of an alien admitted as an exchange visitor, formerly contained in 8 CFR 214j.4, was revoked on August 1, 1958. (23 Fed. Reg. 5818) The Immigration Service has meanwhile ruled that an exchange visitor may be granted a change in nonimmigrant classification, other than as a temporary worker as described in ch. 26. The Service held, however, that such action does not constitute a waiver of the two-year former residence requirement, without which an exchange visitor may not acquire immigrant status or nonimmigrant status as a temporary worker. (Assistant Commissioner, *In the Matter of Z. and B.*, Interim Decision 1028, November 23, 1959)

generally applicable to the new classification. A new Form I-94, "Arrival-Departure Card," is issued to the applicant.

(b) **Denial and appeal.** If the application is denied, the alien is given the reasons for the denial and informed that, within fifteen days after the mailing of the notification, he may appeal to the regional commissioner by filing Form I-290B, "Notice of Appeal." The regional commissioner may grant or deny the application. No appeal lies from his decision. (8 CFR 248.2 and 103.3)

(c) **Special procedure for applicants for exchange visitor status.** In the case of an alien applying for change of status to that of an exchange visitor, the Immigration and Naturalization Service may request the views of the Department of State prior to the granting of the change of status in those cases in which:

(1) the applicant has resided in the United States for a period of one year or longer immediately preceding his application, or

(2) the officer cannot determine from the evidence submitted that the program activity proposed for the applicant is clearly within the scope of the designation of the Exchange Visitor Program concerned, or that the selection procedures agreed upon between the sponsor and the Department of State at the time of the designation have been followed. (22 CFR 63.5(a))

CHAPTER 43

REGISTRATION OF ALIENS AND ADDRESS REPORTS

SECTION.

1. Registration of aliens in the United States.
 - (a) Background.
 - (b) Rule.
2. Exceptions from registration and fingerprinting requirement.
3. Registration forms and evidence of registration.
 - (a) Registration forms.
 - (b) Evidence of registration.
4. Penal provisions.
5. Replacement of registration evidence.
6. Address report and notice of change of address.
 - (a) Annual address report.
 - (b) Change of address report.
 - (c) Address report by nonimmigrants.
 - (d) Report for aliens under fourteen years of age.
 - (e) Penalties.

§ 1. Registration of aliens in the United States.

(a) **Background.** As a rule, aliens in, or seeking to enter, the United States must be registered and fingerprinted. The provisions of existing law incorporate in substance the requirement for registration and fingerprinting first established by the Alien Registration Act of 1940.¹ The Act of September 11, 1957 vested discretionary authority in the Secretary of State and the Attorney General to waive the fingerprinting requirement on a basis of reciprocity in the case of nonimmigrants.² Immigrants seeking to enter the United States are required to be registered and fingerprinted at the time of their application for a visa.³

(b) **Rule.** With the exceptions listed in Section 2, every alien in the United States who is fourteen years of age or older and has not been registered and fingerprinted at the time of his application for a visa or since his admission into the United States has to apply for registration and fingerprinting if he remains in the United States for thirty days or longer. A parent or legal guardian of an alien who is less than fourteen years of age is responsible for the registration of the alien. On reaching his fourteenth birthday the minor must, within thirty days, apply in person to be fingerprinted. (Section 262)

¹ 54 Stat. 670; see also ch. 1, § 13(b).

² See ch. 31, § 4.

³ See ch. 13, § 8.

§ 2. Exceptions from registration and fingerprinting requirement.—Foreign government officials and international organization aliens are exempted from the registration and fingerprinting requirement in the United States as long as they maintain their status. (Section 263(b)) Other nonimmigrants who depart from the United States within one year of admission are exempted from the fingerprinting requirement if they maintain their nonimmigrant status during that time. Nonimmigrants, other than foreign government officials and international organization aliens, who remain in the United States in excess of one year, are required to apply for fingerprinting at once at the termination of the year. Nonimmigrants who fail to maintain their nonimmigrant status must also apply for fingerprinting at once. (8 CFR 264.1(e))

§ 3. Registration forms and evidence of registration.

(a) **Registration forms.** The Immigration and Naturalization Service has prescribed the following forms as registration forms:

- Form I-67 (Inspection Record) for Hungarian refugees.
- Form I-94 (Arrival-Departure Record) for nonimmigrants in status; aliens paroled into the United States; aliens whose entry prior to July 1, 1924, cannot be verified; and aliens who are granted permission to depart without the institution of deportation proceedings or against whom deportation proceedings are being instituted.
- Form I-100C (Alien Laborer's Permit) for Mexican agricultural workers.
- Form I-174 (Application for Crewman's Landing Permit) for crewmen arriving by vessel.
- Form I-175 (Application for Nonresident Alien Canadian Border Crossing Card) for citizens of Canada or British subjects residing in Canada.
- Form I-181 (Memorandum of Creation of Record of Lawful Permanent Residence) for aliens presumed to be lawfully admitted to the United States under immigration regulations.
- Form I-190 (Application for Nonresident Alien Mexican Border Crossing Card) for citizens of Mexico residing in Mexico.
- Form I-485 (Application for Status as Permanent Resident) for aliens who have applied for adjustment of status or establishment of record of lawful admission.
- Form I-590 (Registration for Classification as Refugee-Escapee) for refugee-escapees paroled under the Act of July 14, 1960. (8 CFR 264.1(a))

(b) **Evidence of registration.** The following forms constitute evidence of registration: Forms I-94, I-100C, and I-174 for the classes of aliens described under (a) above, in whose case these forms constitute registration forms. In addition, the following forms are prescribed for other classes of aliens:

- Form I-90 (Application to Replace Alien Registration Receipt Document) for aliens whose evidence of registration has been lost, mutilated, or destroyed.
- Form I-102 (Application for Copy of Alien Laborer's Permit in lieu of one lost, mutilated, or destroyed) for agricultural workers while application is pending.
- Form I-151 (Alien Registration Receipt Card) for lawful permanent residents in the United States.
- Form I-184 (Alien Crewman Landing Permit and Identification Card) for crewmen arriving by vessel.
- Form I-185 (Nonresident Alien Canadian Border Crossing Card) for citizens of Canada or British subjects residing in Canada.
- Form I-186 (Nonresident Alien Mexican Border Crossing Card) for citizens of Mexico residing in Mexico.
- Form I-221 (Order to Show Cause and Notice of Hearing) for aliens against whom deportation proceedings are being instituted. (8 CFR 264.1(b))

Every alien eighteen years of age and over must at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him. (Section 264(e))

§ 4. Penal provisions.—An alien who willfully fails, or refuses, to comply with the requirement for registration and fingerprinting is guilty of a misdemeanor and, on conviction, may be fined not more than \$1,000 or imprisoned not more than six months, or both. (Section 266(a))

An alien, or a parent or a legal guardian of an alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, is guilty of a misdemeanor and, on conviction, will be fined not more than \$1,000 or imprisoned not more than six months, or both. An alien so convicted is subject to deportation. (Section 266(c))

An alien who fails to comply with the requirement to carry with him the Alien Registration Receipt Card or Certificate of Alien Registration is guilty of a misdemeanor and is punishable by a fine not exceeding \$100 or by imprisonment of not more than thirty days, or both. (Section 264(e))

§ 5. Replacement of registration evidence.—Any alien whose evidence of registration has been lost, mutilated, or destroyed must immediately apply for new evidence of registration. The application for new registration evidence must ordinarily be made on Form I-90 (Application to Replace Alien Registration Receipt Document).

A permanent resident alien whose name has been changed after registration may also apply on Form I-90 for a new Form I-151. (8 CFR 264.1(c))

§ 6. Address report and notice of change of address.

(a) **Annual address report.** Every alien subject to registration and fingerprinting who is in the United States on the first day of January of any year has to notify the Commissioner of Immigration and Naturalization within thirty days after that date of his current address on forms made available without cost at post offices and at offices of the Immigration and Naturalization Service. (Section 265)

The form (Address Report Card, Form I-53) requires information concerning the alien's name, residence in the United States, alien registration number, name under which he is registered, immigration status in the United States, country and date of birth, sex, place and date of entry into the United States and country of which he is a subject or citizen.

The Report Card must be signed by the alien or his parent or legal guardian and handed to a postal clerk at any United States post office who will forward it to the Immigration and Naturalization Service. (8 CFR 265.1)

(b) **Change of address report.** In addition to the requirement of the annual address report, every alien required to be registered and fingerprinted has to notify the Commissioner of Immigration and Naturalization in writing of each change of address and new address within ten days from the date of such change. This change of address report is to be made on Form AR-11 which can be obtained without cost at all post offices. (Section 265 and 8 CFR 265.1)

(c) **Address report by nonimmigrants.** Any alien required to be registered and fingerprinted who is in the United States as a nonimmigrant must also notify the Commissioner of Immigration and Naturalization of his address at the expiration of each three-month period during which he remains in the United States, regardless of whether there has been a change of address. This report by nonimmigrant aliens is also to be made on Form AR-11. (Section 265 and 8 CFR 265.1)

(d) **Report for aliens under fourteen years of age.** Address reports for an alien under fourteen years of age have to be submitted by his parent or legal guardian. (Section 265)

(e) **Penalties.** Any alien, or parent, or legal guardian of an alien who fails to submit the annual address report, or the change of address report, or the address report for nonimmigrants, is guilty of a misdemeanor and, on conviction, may be fined not more than \$200 or imprisoned not more than thirty days, or both.

Irrespective of such conviction, any alien who fails to submit the annual address report, the change of address report, or the address report for nonimmigrants, is subject to deportation unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. (Section 266(b))

CHAPTER 44

REENTRY PERMITS

SECTION.

1. Summary and statutory requirement.
2. Procedure.
 - (a) Application and fee.
 - (b) Decision and appeal.
 - (1) Decision.
 - (2) Appeal.
3. Period of validity.
4. Extension of validity.
 - (a) Period of extension.
 - (b) Application and fee.
 - (c) Decision.
5. Effect of reentry permit.
6. Reentry permits for certain treaty merchants.
7. Reentry permit as condition of permission to depart.

§ 1. Summary and statutory requirement.—An alien lawfully admitted for permanent residence who intends to depart temporarily from the United States may, before his departure, apply to the Immigration and Naturalization Service for a reentry permit. The reentry permit will, upon the return of the alien, be accepted by the Immigration Service in lieu of a visa or other documentation which would be required as a condition of admission. (Section 223(a)) An exception applies in the case of an alien returning to the United States after a temporary absence in Albania, Communist portions of China, Korea, or Viet-Nam. Such an alien must always be in possession of an immigrant visa. (8 CFR 211.1)

A reentry permit will, in the discretion of the Attorney General, be issued if it is found that:

- (a) the applicant has been lawfully admitted to the United States for permanent residence;
- (b) he has made application in good faith; and
- (c) his proposed departure from the United States would not be contrary to the interests of the United States. (Section 223(a) and (b))¹

¹ An alien lawfully admitted for permanent residence who departs temporarily from the United States without applying for a reentry permit before his departure may apply at an American consular office abroad for the issuance of a nonquota immigrant visa. (See ch. 7, § 3) An alien returning to an unrelinquished lawful permanent residence after a temporary residence abroad in any places except Albania and Communist portions of China, Korea, and Viet-Nam, with certain exceptions, is exempted from the visa requirement if his residence abroad did not exceed one year and if he presents his alien registration receipt card, Form I-151. (See ch. 13, § 1(b)(3))

§ 2. Procedure.

(a) **Application and fee.** The application for a reentry permit is to be submitted with two photographs of the applicant, on Form I-131, "Application for Permit to Reenter the United States," to the district director having administrative jurisdiction over the applicant's place of residence in the United States. In emergent cases the application may be submitted to the office of the district director having administrative jurisdiction over the place where the resident may be at the time of his application. An application for a reentry permit is accepted only if the applicant is in the United States.

The application requires various identifying data on the applicant including a statement concerning the length of the proposed absence and the reasons for going abroad.

As a rule, the application should be filed thirty days before the proposed date of the applicant's departure from the United States. (8 CFR 223.1)

The fee for the issuance of the reentry permit is \$10. (Section 281)

(b) Decision and appeal.

(1) **Decision.** The district director may approve or deny the application for a reentry permit. If the application is approved the reentry permit is issued on Form I-132 and, as a rule, delivered to the applicant before his departure from the United States. However, if an emergency exists requiring the alien's departure before the permit can be issued, the permit may be forwarded to a consular office abroad for delivery to the applicant.

(2) **Appeal.** If the application for a reentry permit is denied the applicant is given the reasons for the denial and informed that, within fifteen days after the mailing of the notification, he may appeal to the regional commissioner by filing Form I-290B, "Notice of Appeal." The regional commissioner may grant or deny the application. No appeal lies from his decision. (8 CFR 223.1 and 103.3)

§ 3. **Period of validity.**—A reentry permit is valid for the period authorized by the district director, not exceeding one year from the date of issuance.

§ 4. Extension of validity.

(a) **Period of extension.** The validity of a reentry permit may be extended for a period or periods not exceeding one year

in the aggregate. Thus, the total period of validity of a reentry permit, after extension, may never exceed two years. (Section 223(b))

(b) Application and fee. An application for extension of a reentry permit must be submitted to the immigration office having jurisdiction over the applicant's place of residence in the United States or to the immigration officer stationed abroad having jurisdiction over the place where the applicant is temporarily sojourning. The application must be submitted prior to the expiration of the validity of the reentry permit. In his application for extension the applicant must state his name and address in the United States; when, where, and the manner in which he departed from the United States; the point of landing and the date of his arrival abroad; the countries visited by him in the order visited; his reason for requesting an extension and the period for which the extension is desired, and the address to which the permit is to be returned. (8 CFR 223.3)

The fee for each extension of a reentry permit is \$10. (Section 281)

(c) Decision. If the application for an extension is granted, the extension will be indicated on the permit which will be returned to the applicant. If the application is denied the applicant is so notified and the permit returned to him if the remaining period of its validity permits its use for return to the United States. No appeal lies from a decision denying an application for extension of a reentry permit. (8 CFR 223.3)

§ 5. Effect of reentry permit.—An alien to whom a reentry permit is issued may use it during the period of its validity for one or more applications for entry into the United States. (Section 223(c)) The reentry permit is accepted by the Immigration and Naturalization Service in lieu of an immigrant visa in that it shows that the alien is returning from a temporary visit abroad.

The return to the United States of an alien holding a reentry permit, however, constitutes a new "entry"² and he may be admitted to the United States only if he qualifies for admission like an alien applying for admission to the United States for the first time. Like other returning resident aliens, however, the holder of a reentry permit is exempted from the literacy requirement. Also, if he is returning from a temporary visit abroad to a lawful unrelinquished domicile of seven consecutive years he may be admitted in the discretion of the

² See ch. 5, § 3(a) for definition of term "entry."

Attorney General regardless of whether he may be inadmissible as a member of any of the classes of inadmissible aliens, except those relating to subversive aliens.³

§ 6. Reentry permits for certain treaty merchants.—Reentry permits may be issued to treaty merchants who were lawfully admitted to the United States between July 1, 1924, and July 5, 1932, under Section 3(6) of the Immigration Act of 1924,⁴ if they have maintained the status required of them at the time of their admission and if they desire to resume that status after a temporary visit abroad. (Section 223(a)(2) and (b))

The purpose of this provision is to protect certain aliens admitted to the United States as treaty merchants before July 6, 1932. On this date the requirement was established that a treaty merchant "carry on trade between the United States and the foreign state of which he is a national." In order to permit the return into the United States of a limited number of aliens admitted as treaty merchants before that date who did not carry on trade between the United States and the foreign state of which they were nationals, a measure authorizing the issuance of "treaty merchants return permits" to this group of aliens was enacted on June 3, 1948.⁵ The present provision of law carries forward the 1948 measure.

§ 7. Reentry permit as condition of permission to depart.—Regulations effective since December 1, 1960, prohibit the departure from the United States of any alien lawfully admitted for permanent residence who seeks to depart from the United States for travel to, in, or through Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), the Union of Soviet Socialist Republics, or Yugoslavia, unless he possesses a valid, unexpired reentry permit issued after December 1, 1960.⁶

³ See ch. 34, § 2.

⁴ 43 Stat. 154.

⁵ 62 Stat. 335.

⁶ See also ch. 13, § 1(b)(3) and ch. 33, § 32(a)(1).

PART VII
DEPORTATION AND RELIEF FROM DEPORTATION

CHAPTER 45

DEPORTATION AND CLASSES OF DEPORTABLE ALIENS

SECTION.

1. Summary—Constitutional authority.
 - (a) Authority to deport inherent in sovereign state.
 - (b) Ex post facto prohibition inapplicable.
 - (c) Classes of deportable aliens—Relief.
2. Aliens excludable at time of entry.
 - (a) Rule.
 - (b) Interpretation.
 - (1) Excludability at time of entry.
 - (2) Evidence.
 - (c) Nonapplicability in certain cases.
 - (d) Retroactive relief from inadmissibility.
 - (1) Inadmissibility for lack of proper immigrant visa.
 - (2) Inadmissibility for lack of proper nonimmigrant visa.
 - (3) Inadmissible returning resident aliens.
 - (4) Waiver of criminal and immoral grounds for certain close relatives.
 - (5) Retroactive application of statutory exemption from inadmissibility.
3. Uninspected aliens and aliens in the United States in violation of law.
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 - (b) Interpretation.
 - (1) Inspection at designated place and time.
 - (2) False claim to United States birth.
 - (3) Denaturalization subsequent to entry.
4. Violators of nonimmigrant status.
 - (a) Rule.
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 - (a) Rule.
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6. Institutionalized aliens.
 - (a) Rule.
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 - (1) Crime involving moral turpitude.
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 - (3) Sentence to confinement or confinement.
 - (4) Single scheme of criminal misconduct.
 - (5) Conviction of two crimes, no confinement required.
 - (6) Pardon.
 - (7) Recommendation against deportation.

SECTION.

8. Violators of report requirements.
 - (a) Rule.
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 - (a) Rule.
 - (b) Interpretation.
 - (1) Narcotic drug addict.
 - (2) Conviction.
 - (3) Finality of conviction.
 - (4) Retroactivity.
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13. Prostitutes and procurers.
 - (a) Rule.
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 - (2) "Other immoral purpose."
14. Promoters of illegal entrants.
 - (a) Rule.
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 - (2) Transporting within the United States.
15. Illegal owners of guns.
16. Convicts for certain subversive activities.
17. Violators of laws relating to national security and defense.
18. Aliens fraudulently married.
 - (a) Rule and exception.
 - (1) Rule.
 - (2) Exception.
 - (b) Interpretation.
 - (1) General.
 - (2) Burden of proof.

§ 1. **Summary—Constitutional authority.**—While the exclusion of aliens deals with persons who present themselves at a port of entry and apply for admission into the United States,¹ the deportation of aliens, described in this and the following chapter, deals with persons who are already in the United States and whose stay is to be terminated by expulsion. The deportation of an alien, as a rule, has a much more far-reaching effect than exclusion since, in many instances, the alien to be deported has long been in the United States, may be the husband or wife of an American citizen or the parent of American

¹ See chs. 33, 37.

citizen children and may be well established economically, while, on the other hand, he may have lost all ties to the foreign country from which he originally came.

(a) **Authority to deport inherent in sovereign state.** The constitutionality of deportation laws has frequently been challenged in the courts. But the unqualified authority of Congress to terminate hospitality to aliens has always been upheld. The Supreme Court has stressed the "ambiguous status" of the alien who perpetuates "a dual status as an American inhabitant but foreign citizen."² Such a person, the Court pointed out, may derive advantages from two sources of law—American and international. He may claim protection against the American Government unavailable to the citizen. As an alien he retains a claim upon the state of his citizenship to diplomatic intervention on his behalf. The alien also retains immunities from certain burdens which the citizen must shoulder. "By withholding his allegiance from the United States he leaves outstanding a foreign call on his loyalties which international law not only permits our Government to recognize but commands it to respect." Such aliens, the Court pointed out, cannot, consistently with international commitments, be compelled "to take part in the operations of war directed against their own country." In addition to these general immunities they may enjoy particular treaty privileges. The Court observed:

"Under our law the alien, in several respects, stands on equal footing with citizens, but in others has not been conceded legal parity with the citizen. Most importantly, to protect this ambiguous status within the country is not his right but it is a matter of permission and tolerance. The Government's power to terminate its hospitality has been asserted and sustained by this Court since the question first arose. . . . That aliens remain vulnerable to expulsion after long residence is a practice that bristles with severities. But it is a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state. Such is the traditional power of the nation over the alien and we leave the law on the subject as we find it."

(b) **Ex post facto prohibition inapplicable.** The Immigration and Nationality Act enumerates the grounds for which aliens in the United States may be deported. These grounds, unless otherwise specified in each class, are retroactive, i.e., they apply notwithstanding the fact that the alien entered the United States before the enactment of the Immigration and Nationality Act or that the facts by reason of which he belongs to any of the deportable classes occurred before the enactment of the act. (Section 241(d))

² *Harisiades v. Shaughnessy* (1952) 342 U. S. 580, 96 L. ed. 586, 72 Sup. Ct. 512.

The question whether the requirement that aliens be deported for acts committed before the enactment of the law violates Article I, Paragraph 9 of the Constitution, which forbids *ex post facto* enactments, has repeatedly been argued in the courts. The Supreme Court has held that the Constitution forbids penal legislation which imposes or increases criminal punishment for conduct lawful previous to its enactment. Deportation, however, has been consistently classified by the Court as a civil rather than a criminal procedure and therefore held unaffected by the constitutional prohibition. Mr. Justice Holmes, for the Supreme Court, said: "It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. The determination by facts that might constitute a crime under local law is not a conviction of crime, nor is the deportation a punishment; it is simply a refusal by the government to harbor persons whom it does not want. . . . The prohibition of *ex post facto* laws . . . has no application."³ This interpretation has since been reaffirmed by the Supreme Court:

"Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government. And whatever might have been said at an earlier date for applying the *ex post facto* clause, it has been the unbroken rule of this Court that it has no application to deportation."⁴

(c) **Classes of deportable aliens—Relief.** The classes of deportable aliens are described in the following sections of this chapter.⁵ Once an alien has committed an act which brings him within one of the deportable classes he remains deportable in-

³ *Bujawewitz v. Adams* (1913) 228 U. S. 585, 591; 57 L. ed. 978, 33 Sup. Ct. 607.

⁴ *Galvan v. Press* (1954) 347 U. S. 522, 531; 98 L. ed. 911, 74 Sup. Ct. 737.

An alien who committed a narcotic offense in December 1937 is deportable under § 241(a)(11) without violating the *ex post facto* provisions of the Constitution since the inhibition against the passage of *ex post facto* law applies only to criminal laws. (BIA, *In the Matter of M.*, 5, I. & N. Dec. 261, June 1, 1953) The language in § 241(d) is sufficiently broad to include not only new classes of deportable aliens, but also to eliminate preexisting bars to deportation. (*U.S. ex rel. Marcella v. Ahrens* (D.C. La., 1953) 113 F. Supp. 22; *U.S. ex rel. Barile v. Murff* (D.C. Md., 1953) 116 F. Supp. 163) Hence an alien previously found not to be deportable under the Immigration Act of 1917, as amended, may now be deportable under the provisions of § 241(a). There is no provision for a statute of limitations with respect to any deportation charge contained in the Immigration and Nationality Act. (BIA, *In the Matter of C.*, 5, I. & N. Dec. 630, January 19, 1954)

⁵ See Appendix B for the text of § 241, listing the general classes of deportable aliens.

definitely unless his status is subsequently regularized under one of the procedures available for this purpose.⁶

§ 2. Aliens excludable at time of entry.

(a) **Rule.** Any alien is deportable if he, at the time of entry, was within one or more of the classes of aliens excludable by the law existing at the time of such entry. (Section 241(a)(1))⁷ This provision emphasizes that the admission of an alien into the United States does not cure a deficiency in the alien's qualification for admission which remained undetected by the examining immigration officer. In the absence of a statute of limitations an alien who was, in fact, inadmissible when admitted remains subject to expulsion indefinitely unless he qualifies for relief from deportation. Determination as to whether an alien was excludable at the time of admission has to be made in the light of the standards described earlier.⁸

(b) Interpretation.

(1) **Excludability at time of entry.** Whether an alien is deportable under Section 241(a)(1) depends on a finding that he was excludable at the time of his entry. Consequently, an alien who procured a visa by concealing a conviction for burglary and who therefore was excludable under Section 212(a)(19) at the time of his entry in 1954, is deportable under Section 241(a)(1) irrespective of a pardon for the burglary offense granted by the Governor of Texas in 1956. This pardon did not relieve the alien of the consequences of deportability since it could not vitiate the fraud committed at the time the document was obtained.⁹ Conversely, an alien who after his last entry admits in deportation proceedings that he committed a crime before his entry is not deportable under Section 241(a)(1).¹⁰

(2) **Evidence.** An alien's refusal to testify in deportation proceedings concerning questions of alienage, time, place and manner of entry, and possession of entry documents constitutes evidence supporting a finding that he is deportable for having

⁶ For a discussion of the various procedures available for relief from deportation see § 2(c) and (d) of this chapter and chs. 39, 40, 46, 47, and 49.

⁷ For text see Appendix B.

⁸ See ch. 33.

⁹ BIA, *In the Matter of G.R.*, 7, I. & N. Dec. 508, June 28, 1957.

¹⁰ BIA, *In the Matter of M.*, 5, I. & N. Dec. 676, February 10, 1954. To be effective as ground of exclusion under § 212(a)(9), an admission of having committed a crime involving moral turpitude or acts which constitute the essential elements of such a crime must have been made prior to, or at the time of, the alien's entry into the United States.

entered the United States as an immigrant not in possession of a valid immigrant visa.¹¹

(c) **Nonapplicability in certain cases.** The Act of September 11, 1957, in Section 7,¹² exempts from deportation under Section 241(a)(1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States, by fraud or misrepresentation or who were not of the nationality specified in their visas if:

(1) they are the spouses, parents, or children of United States citizens or of aliens lawfully admitted for permanent residence;¹³ or

(2) they were admitted to the United States between December 22, 1945 and November 1, 1954 and misrepresented their nationality, place of birth, identity, or residence in applying for a visa because they feared persecution on account of race, religion, or political opinion if repatriated to their former home or residence and if the misrepresentation was not committed to evade investigations under the immigration laws or existing quota restrictions.

The provision benefiting the group of aliens listed under (2) above, was intended to relieve from deportation displaced persons who entered the United States under the general law or under the Displaced Persons Act of 1948 and who misrepresented their nationality not to obtain unlawful benefits under the immigration laws but because they feared repatriation to Communist-dominated countries.¹⁴

These exemptions, however, apply only in the case of aliens who, at the time of admission, were otherwise admissible.¹⁵

¹¹ Attorney General, *In the Matter of R.S.*, 7, I. & N. Dec. 271, September 13, 1956; see also BIA, *In the Matter of A.M.*, 7, I. & N. Dec. 332, October 30, 1955.

¹² 71 Stat. 640, 8 U.S.C. 1251, F.C.A. 8 § 1251.

¹³ An alien in the United States who entered falsely claiming United States citizenship may be relieved from deportability by discretionary grant of the documentary waiver described under (d)(1) and the application of the first clause of § 7 of the Act of September 11, 1957. (BIA, *In the Matter of Y.*, Interim Decision 975, February 2, 1959) The Board also terminated deportation proceedings under the first clause of § 7 in the case of an alien who admitted the commission of perjury in obtaining his visa by fraud and misrepresentation and who may have misrepresented his place of birth to evade quota restrictions. (BIA, *In the Matter of K.*, Interim Decision 995, April 24, 1959)

¹⁴ House Report No. 1199, 85th Congress, First Session, pp. 9-11.

¹⁵ Native of Italy who fraudulently obtained nonquota immigrant visa by posing as native of Argentine is not entitled to exemption from deportability under first sentence of § 7, Act of September 11, 1957, since, apart from her misrepresentations, she was not "otherwise admissible" at time of entry in that she was not a nonquota immigrant as specified in her visa. (BIA, *In the Matter of D'O.*, Interim Decision 970, December 17, 1958)

In other words, it does not apply if an alien was found inadmissible for an additional ground specified under the law.¹⁶

(d) **Retroactive relief from inadmissibility.** The Immigration and Naturalization Service and the Board of Immigration Appeals have held that certain discretionary authority of the Attorney General to admit otherwise inadmissible aliens may be exercised *nunc pro tunc*, i.e., after the alien's entry into the United States effective retroactively to the time of his entry.¹⁷ It has also been held that certain statutory exemptions from inadmissibility may similarly be applied *nunc pro tunc*. These rulings are discussed below.

(1) **Inadmissibility for lack of proper immigrant visa.** The authority of the Attorney General contained in Section 211(c) to admit an immigrant who is inadmissible because he is not properly charged to the quota specified in the immigrant visa, or because he is not a nonquota immigrant although holding a nonquota immigrant visa¹⁸ may be exercised retroactively in deportation proceedings¹⁹ and also without the institution of deportation proceedings.²⁰

(2) **Inadmissibility for lack of proper nonimmigrant visa.** The Immigration and Naturalization Service has held that the Attorney General's authority contained in Section 212(d)(3) to admit an otherwise inadmissible nonimmigrant,²¹ for example, because he has been convicted of a crime involving moral turpitude, may be exercised *nunc pro tunc*.²²

(3) **Inadmissible returning resident aliens.** The discretion of the Attorney General contained in Section 212(c) to authorize the admission of an otherwise inadmissible returning resident alien²³ may be exercised retroactively in deportation

¹⁶ BIA, *In the Matter of S.*, 7, I. & N. Dec. 715, May 2, 1958.

¹⁷ This doctrine was developed under the Immigration Act of 1917 and carried over under subsequent legislation. (BIA, *In the Matter of L.*, 1, I. & N. Dec. 1, August 29, 1940, approved by Attorney General; BIA, *In the Matter of S.*, 6, I. & N. Dec. 392, November 24, 1954; approved by Attorney General, March 15, 1955)

¹⁸ See ch. 33, § 17(b).

¹⁹ BIA, *In the Matter of N.*, 6, I. & N. Dec. 321, September 10, 1954 and BIA, *In the Matter of R.*, 7, I. & N. Dec. 304, August 16, 1956.

²⁰ Regional Commissioner, *In the Matter of D.C.*, 7, I. & N. Dec. 525, July 26, 1957; approved by Central Office, August 19, 1957.

²¹ See ch. 34, § 4.

²² See for example Regional Commissioner, *In the Matter of M.*, Interim Decision 990, March 5, 1959. In this case the Service removed in 1959 a crewman's inadmissibility in 1948 because he was convicted of theft.

²³ See ch. 34, § 2.

proceedings.²⁴ By this action the ground of deportation is removed and deportation proceedings are terminated.

(4) **Waiver of criminal and immoral grounds for certain close relatives.** As earlier described, the Attorney General was given authority by the Act of September 11, 1957 to authorize after that date the admission of certain immigrants otherwise inadmissible for criminal or immoral grounds if they are close relatives of United States citizens or permanent resident aliens.²⁵ Whether this authority may be exercised *nunc pro tunc* in deportation proceedings to cure a designated ground of inadmissibility at the time of the alien's entry appears doubtful. The Board of Immigration Appeals ruled in the affirmative;²⁶ the District Court for the Southern District of New York disagreed.²⁷ In holding that the Board "took liberties with the statute," the Court pointed out that the Act of September 11, 1957 makes a clear distinction between relief in exclusion and deportation proceedings, when on one hand it ameliorated certain deportation provisions and on the other hand certain exclusion provisions. Had there been an intention to give the Attorney General discretionary power with respect to deportation where the language of the law refers only to exclusion, in the opinion of the Court, the statute would have stated so.

(5) **Retroactive application of statutory exemption from inadmissibility.** The Immigration and Naturalization Service and the Board of Immigration Appeals have held that certain exemptions from inadmissibility available statutorily to aliens applying for immigrant visas and admission are also available without specific statutory sanction to an alien already in the United States so as to cure retroactively his defective status at the time of entry. The petty offense exception to inadmissibility in Section 4 of the Act of September 3, 1954²⁸ was held to apply to an alien presently in the United States who entered

²⁴ BIA, *In the Matter of M.*, 5, I. & N. Dec. 598, January 4, 1954. The fact that the status of a person lawfully admitted for permanent residence may have changed by reason of his subsequent deportability does not preclude the exercise of discretionary authority contained in § 212(c), notwithstanding the definition of the term "lawfully admitted for permanent residence" in § 101(o)(20) which says, *inter alia*, "such status not having changed." (BIA, *In the Matter of S.*, 6, I. & N. Dec. 392, approved by Attorney General, March 15, 1955.) However, the benefits of § 212(c) of the Act cannot be exercised *nunc pro tunc* in the case of an alien who was lawfully admitted to the United States for permanent residence in 1902 but who last entered the United States in 1931 without inspection and was found deportable under § 241(o)(2). Section 212(c) does not contain authority to waive entry without inspection which is a ground of deportation. (BIA, *In the Matter of M.*, 5, I. & N. Dec. 642, January 26, 1954)

²⁵ See ch. 34, § 3(a).

²⁶ BIA, *In the Matter of P.*, 7, I. & N. Dec. 713, April 21, 1958.

²⁷ *Puig y Gorcio v. Murff* (D.C., S.D.N.Y., 1958) 168 F. Supp. 890.

²⁸ See ch. 33, § 5(i).

the United States first in 1900 and, after several temporary visits to Canada, last in 1913, and who was convicted of a petty offense in the United States in 1906. The Board reasoned that since the statute would benefit the alien if he sought to enter the United States from abroad he should also benefit from it in deportation proceedings.²⁹

The Board also held that a "defector" finding,³⁰ irrespective of the language of the statute requiring independent findings by a consular officer and the Attorney General, may be made in deportation proceedings although no such finding was made by a consular officer.³¹

§ 3. Uninspected aliens and aliens in the United States in violation of law.

(a) **Rule.** An alien is deportable if he entered the United States without inspection or at any time or place not designated for inspection by the Attorney General, or is in the United States in violation of law. (Section 241(a)(2))³²

(b) **Interpretation.** This provision covers several of the technical violations of entry requirements discussed earlier.

(1) **Inspection at designated place and time.** The provision includes violations of the requirement that an alien must apply for admission at a place designated as a port of entry for aliens and at a time specified for inspection.³³ It also requires deportation of an alien who "remained longer" than the period for which he was admitted as a nonimmigrant.³⁴

(2) **False claim to United States birth.** An alien is considered as having entered without inspection if he falsely claims birth in the United States at the time of his entry and thereby avoids inspection.³⁵

²⁹ BIA, *In the Matter of C.*, 6, I. & N. Dec. 331, October 8, 1954. The Board also held that an alien is not precluded from establishing good moral character by the provisions of § 101(f)(3) if convicted in the United States within the statutory period during which good moral character is required of an offense which comes within the purview of § 4. (BIA, *In the Matter of M.*, 7, I. & N. Dec. 147, March 16, 1956; see ch. 5, § 3 (d)) In *Puig y Garcia v. Murff*, *supra*, the Court expressed the opinion that the Board, in applying *nunc pro tunc* the petty offense exception of the Act of September 3, 1954, was taking "liberties with the statute." The Board meanwhile stressed that its *nunc pro tunc* application of § 4 is limited to cases of aliens in the United States who were inadmissible at the time of entry and to cases dealing with questions of good moral character. (BIA, *In the Matter of D.*, Interim Decision 1079, May 25, 1960)

³⁰ See ch. 33, § 25(d).

³¹ BIA, *In the Matter of V.*, Interim Decision 1053, February 8, 1960; see also Assistant Commissioner, *In the Matter of P.*, Interim Decision 1025, April 13, 1959.

³² For text see Appendix B.

³³ See ch. 37, § 2(d).

³⁴ BIA, *In the Matter of B.*, 7, I. & N. Dec. 400, January 28, 1957.

³⁵ BIA, *In the Matter of E.*, 6, I. & N. Dec. 275, August 5, 1954.

(3) **Denaturalization subsequent to entry.** An alien who entered as a citizen and subsequently lost his citizenship through denaturalization may not be considered as having entered without inspection unless he had procured naturalization by fraud.³⁶

§ 4. Violators of nonimmigrant status.

(a) **Rule.** An alien admitted as a nonimmigrant is deportable if he failed to maintain his nonimmigrant status or to comply with the conditions of his status. (Section 241(a)(9))³⁷

(b) **Interpretation.** This provision applies to all forms of violation of the particular nonimmigrant status in which an alien was admitted or which he subsequently acquired, and of the particular conditions of his admission.³⁸ Examples are the case of a visitor who accepts employment without permission;³⁹ the case of a student who accepted employment after completing the studies for which he was admitted;⁴⁰ the case of family members of foreign government officials who remained in the United States after their official status terminated;⁴¹ the case of a visitor for pleasure who obtained a social security card and registered for employment;⁴² and the case of an alien convicted of disorderly conduct (jostling) and imprisoned during the period for which he was admitted as a visitor.⁴³ The introduction in the Congress of a private bill to obtain for a nonimmigrant alien the status of an immigrant lawfully admitted for permanent residence is *prima facie* evidence of an intention by the alien to violate his nonimmigrant status.^{43a}

Frequently, the ground of deportation described in this section concurrently applies with that described in Section 3, above.

§ 5. Public charges.

(a) **Rule.** An alien is deportable if he, in the opinion of the Attorney General, has within five years after entry become a

³⁶ BIA, *In the Matter of E.*, *supra*. See also BIA, *In the Matter of C.*, 3, I. & N. Dec. 275, August 10, 1948, approved by Attorney General, January 6, 1950.

³⁷ For test see Appendix B.

³⁸ See chs. 18-28 for classes of nonimmigrants and ch. 32 for conditions of their admission.

³⁹ BIA, *In the Matter of S.*, Interim Decision 1055, February 24, 1960. Determination of deportability does not depend on regulations containing specific bar against employment.

⁴⁰ BIA, *In the Matter of H.*, 6, I. & N. Dec. 458, December 15, 1954.

⁴¹ BIA, *In the Matter of S.H.C.C.*, 4, I. & N. Dec. 36, May 11, 1950.

⁴² BIA, *In the Matter of B.*, 6, I. & N. Dec. 234 July 23, 1954.

⁴³ BIA, *In the Matter of A.*, 6, I. & N. Dec. 762, October 19, 1955. This is true even though the conviction is not one which could form the basis for exclusion or deportation.

^{43a} Attorney General, *In the Matter of A.*, 6, I. & N. Dec. 651, March 27, 1956. See also ch. 49, § 4(a).

public charge from causes not affirmatively shown to have arisen after entry. (Section 241(a)(8))⁴⁴

(b) **Interpretation.** Laws calling for the deportation of aliens who have become public charges after entry are among the earliest Federal statutes affecting aliens. The present law, in substance, carries over previous law and, consequently, earlier developed interpretations and standards apply. In defining the type of services the acceptance of which would render an alien deportable under the comparable provisions of the Immigration Act of 1917, the Board of Immigration Appeals, in a decision approved by the Attorney General, made the following observation:

"The acceptance by an alien of services provided by a State or by a subdivision of a State to its residents, services for which no specific charge is made, does not in and of itself make the alien a public charge within the meaning of the 1917 act. To illustrate, an alien who participates, without cost to him, in an adult education program sponsored by the State does not become a public charge. Similarly with respect to an alien child who attends public school, or alien child who takes advantage of the free-lunch program offered by schools. We could go on *ad infinitum* setting forth the countless municipal and State services which are provided to all residents, alien and citizen alike, without specific charge of the municipality or the State, and which are paid out of the general tax fund. The fact that the State or the municipality pays for the services accepted by the alien is not, then, by itself, the test of whether the alien has become a public charge."⁴⁵

In the same decision the Board defined the following test to be applied before a determination can be made that an alien has become a public charge:

(1) the State or other governing body must, by appropriate law, impose a charge for the services rendered to the alien;⁴⁶

(2) the authorities must make demand for payment of the charges upon the persons made liable under State law; and

(3) there must be a failure to pay for the charges. A showing that there was a failure to pay for the charges is not required if it is shown that the demand was unnecessary because there was no one against whom payment could be enforced.⁴⁷

⁴⁴ For text see Appendix B.

⁴⁵ BIA, *In the Matter of B.*, 3, I. & N. Dec. 323, September 10, 1948; approved by Attorney General, October 28, 1948.

⁴⁶ See also BIA, *In the Matter of V.*, 2, I. & N. Dec. 78, March 25, 1944.

⁴⁷ BIA, *In the Matter of L.*, 6, I. & N. Dec. 349, October 29, 1954.

It has also been consistently held that a person confined to a penal institution, whether prison or State hospital for the criminally insane, is not deportable as an alien who has become a public charge.⁴⁸

The language of the statute shifts the burden of proof on the alien to show that the condition for which he has become a public charge resulted from causes which have arisen after entry.⁴⁹

§ 6. Institutionalized aliens.

(a) **Rule.** An alien is deportable if, after December 24, 1952, and within five years after entry, he becomes institutionalized at public expense because of mental illness, defect, or deficiency unless he can show that the disease, defect, or deficiency did not exist before his admission to the United States. (Section 241(a)(3))⁵⁰

(b) **Interpretation.** Congress provided this new ground for deportation in 1952 in recognition of the fact that in some cases aliens institutionalized because of mental deficiency escaped deportation as public charges under previous law by payment of the minimum charge of public institutions which did not represent the full cost to the taxpayer.⁵¹ Consequently, an alien remains deportable under the new provision as long as the full cost of the institutional care has not been paid.⁵² Since Section 241(a)(3) has no retroactive effect it is not applicable in the case of an alien who became institutionalized at public expense before the effective date of the Immigration and Nationality Act even though his institutionalization continued beyond that date.⁵³ An alien who was institutionalized at public expense within five years of entry has the burden of establishing that his disability did not exist before his entry into the United States.⁵⁴

⁴⁸ Central Office, *In the Matter of P.*, 4, I. & N. Dec. 565, November 28, 1951, and BIA, *In the Matter of V.*, 5, I. & N. Dec. 725, May 12, 1954.

⁴⁹ The development of a psychosis is not conclusive evidence that the condition is hereditary or constitutional. It is necessary to determine whether the mental breakdown occurred from proximate causes or whether the life history reveals an abnormal person who can properly be excluded or deported as one who was of constitutional psychopathic inferiority at the time of entry or mentally defective. (BIA, *In the Matter of S.*, 5, I. & N. Dec. 682, February 11, 1954)

⁵⁰ For text see Appendix B.

⁵¹ Senate Report No. 1515, 81st Congress, Second Session, p. 390.

⁵² BIA, *In the Matter of C.R.*, 7, I. & N. Dec. 124, February 15, 1956.

⁵³ BIA, *In the Matter of L.*, 6, I. & N. Dec. 349 October 29, 1954.

⁵⁴ This burden is not met where the only evidence offered to show that his mental illness did not exist before admission are the testimonies of the alien and his wife which are inconsistent with previous statements. (BIA, *In the Matter of W.*, Interim Decision 1069, April 25, 1960)

§ 7. Convicted aliens.

(a) Rule and exception.

(1) Rule. An alien is deportable if he:

(i) is convicted of a crime involving moral turpitude within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution for a year or more; or

(ii) at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct regardless of whether confined therefor and regardless of whether the convictions were in a single trial. (Section 241(a)(4))⁵⁵

(2) **Exception.** An alien convicted of a crime or crimes, other than one convicted of a narcotic offense, is exempted from deportation if:

(i) subsequent to the conviction a full and unconditional pardon has been granted by the President of the United States or by the Governor of any of the several States; or

(ii) at the time of first imposing judgment or passing sentence, or within thirty days thereafter, the court makes a recommendation to the Attorney General that the alien should not be deported. In the latter case the court, before making the recommendation, must have given due notice and an opportunity to make representations to the interested State, the Immigration and Naturalization Service, and the prosecuting authorities. (Section 241(b), as amended)⁵⁶

Notice to the district director having administrative jurisdiction over the place in which the court imposing sentence is located is regarded as notice to the Service. A recommendation against deportation by the sentencing court made to the district director receiving the notice is regarded as made to the Attorney General. (8 CFR 241.1)

(b) Interpretation.

(1) **Crime involving moral turpitude.** Both clauses of Section 241(a)(4) refer to crimes involving moral turpitude. This term is fully discussed in connection with inadmissible

⁵⁵ For text see Appendix B.

⁵⁶ For text see Appendix B. The "notice" requirement is satisfied when alien's counsel has furnished Service with notice of intention to move the court for a recommendation against deportation. (BIA, *In the Matter of P.*, Interim Decision 1085, June 21, 1960)

aliens and reference is therefore made to that discussion.⁵⁷ As stated there, the determination whether an offense is one involving moral turpitude is made from the inherent nature of the crime, as defined by statute or interpreted by the courts, and as limited and described by the record of conviction. Where doubt exists, the burden of proving deportability has not been met.⁵⁸

Deportability results from the *commission* of a crime within five years after entry. It is immaterial when the conviction for the crime occurs. The first or any subsequent entry of an alien may be used in determining whether the crime was committed within five years after entry.⁵⁹ Although local law views prosecution for theft in violation of a city ordinance as a civil proceeding, conviction for this offense is conviction for a "crime."⁶⁰ Similarly, conviction for disorderly conduct under the New York Penal Law is conviction for a crime involving moral turpitude although New York courts have defined these violations as "offenses" as distinguished from "crimes" and "misdemeanors."⁶¹

(2) **Place of conviction.** While the statute under both clauses stipulates that the alien's conviction must have taken place after entry it does not require that the conviction be in the United States. Consequently, conviction by a court martial in Germany satisfies the requirement of the statute.⁶²

(3) **Sentence to confinement or confinement.** Under the first clause of Section 241(a)(4) an alien becomes deportable only if he is sentenced to confinement or confined for the crime committed within five years after entry. Sentence to confinement is present even if it was wholly suspended.⁶³ On the other hand, where a conviction for a crime involving moral turpitude results in suspension of the imposition of sentence with probation for five years the alien was not "sentenced to confinement" within the meaning of Section 241(a)(4).⁶⁴ Com-

⁵⁷ See ch. 33, § 5(b).

⁵⁸ BIA, *In the Matter of H.*, 7, I. & N. Dec. 616, November 27, 1957.

⁵⁹ BIA, *In the Matter of A.*, 6, I. & N. Dec. 684, August 18, 1955.

⁶⁰ BIA, *In the Matter of C.R.*, Interim Decision 939, June 25, 1958.

⁶¹ BIA, *In the Matter of G.*, 7, I. & N. Dec. 520, July 16, 1957.

⁶² BIA, *In the Matter of N.*, 7, I. & N. Dec. 356, November 23, 1956. In this decision the Board pointed out that, different from the existing statute, its predecessor provision in the Immigration Act of 1917 required that the conviction had to be "in this country."

⁶³ BIA, *In the Matter of M.*, 6, I. & N. Dec. 346, October 25, 1954; see also BIA, *In the Matter of C.P.*, Interim Decision 1042, December 14, 1959.

⁶⁴ BIA, *In the Matter of V.*, 7, I. & N. Dec. 577, September 5, 1957.

mitment for an indefinite term for treatment and supervision under the Federal Youth Corrections Act of September 30, 1950 is not a "sentence to confinement."⁶⁵

(4) **Single scheme of criminal misconduct.** Under the second clause of Section 241(a)(4) deportation is required of an alien who was convicted of *two* crimes involving moral turpitude, "not arising out of a single scheme of criminal misconduct."

The natural and reasonable meaning of the phrase "not arising out of a single scheme of criminal misconduct," according to the Board of Immigration Appeals, is that an alien who has performed an act which, in and of itself, constitutes a complete, individual and distinct crime, becomes deportable when he again commits such an act, provided he is convicted of both. The fact that one may follow the other closely, even immediately, in point of time is of no moment. Equally immaterial is the fact that the crimes are similar in character, or that each distinct and separate crime is part of an overall plan of criminal misconduct. Simply because an alien commits a crime and later repeats his offense the conclusion does not follow that the offense is a part of a single scheme, even though the crimes were similar, if each criminal act was a complete and distinct offense for which the alien was convicted.⁶⁶

In subsequent decisions the Board held that convictions which are the result of separate episodes are not part of a "single scheme" even though the episodes occur pursuant to a continuing criminal plan or conspiracy.⁶⁷ The Board used the following examples to illustrate one episode or single scheme of criminal misconduct:

(i) Where there is in fact one physical act affecting one person (counterfeiting and possession of counterfeit money; larceny and unlawfully receiving stolen goods).

(ii) Where there are a series of similar acts which occurred at "one time" (A, B, & C are robbed by the alien at the same time; A & B are indecently fondled at the same time). It is not a single scheme if the alien robs A and after completing this crime and escaping, shortly thereafter, robs B in a separate episode of crime.

(iii) Where the acts occur within a comparatively short time of each other, involve the same parties, and the first act or acts are com-

⁶⁵ BIA, *In the Matter of V.*, Interim Decision 1005, June 1, 1959. See also BIA, *In the Matter of N.*, Interim Decision 1078, May 26, 1960. Commitment to State Hospital under New Jersey Sex Offenders Act is not a sentence to confinement in a prison or corrective institution. (BIA, *In the Matter of M.*, Interim Decision 983, February 12, 1959)

⁶⁶ BIA, *In the Matter of M.*, 7, I. & N. Dec. 144, March 9, 1956.

⁶⁷ BIA, *In the Matter of Z.*, Interim Decision 958, October 28, 1958.

mitted for the purpose of making possible the specific criminal objective accomplished by the last of the criminal acts (assault on home owner and robbery of his house). It is not a single scheme if the first acts are meaningful in and of themselves in that they have no relation to the completion of the second act which would have happened whether or not the first had taken place (submitting fraudulent bills for painting to the same person over a period of time; sale of illegal liquor to the same person on occasions two weeks apart). Intent to make a living by criminality does not make the separate unrelated acts a single scheme.⁶⁸

Earlier, the Board held that committing three separate and distinct acts of robbery upon three separate individuals at separate times and for the sole purpose of depriving these individuals of their possessions and an attempt to do a similar act upon a fourth individual does not constitute a single scheme of criminal misconduct.⁶⁹

(5) **Conviction of two crimes, no confinement required.** Under the second clause of Section 241(a) (4) deportability depends on an alien's conviction of two crimes irrespective of whether he was confined therefor. Consequently, it is immaterial if the conviction resulted in a sentence of less than one year, a suspended sentence, probation, or a mere fine.⁷⁰ It is also immaterial that one of the offenses is a misdemeanor classifiable as a petty offense under Section 4 of the Act of September 3, 1954⁷¹ since the benefits of that statute apply only to aliens who have committed only one such offense.⁷²

The second clause of Section 241(a) (4) is not satisfied by the existence of a conviction unless it has achieved a certain degree of "finality."⁷³ This requirement is satisfied when the conviction results either in suspension of the execution of sentence or in suspension of the imposition of sentence,⁷⁴ but not when the imposition of sentence is postponed.⁷⁵

⁶⁸ BIA, *In the Matter of B.*, Interim Decision 971, December 31, 1958.

⁶⁹ BIA, *In the Matter of A.*, 5, I. & N. Dec. 470, October 8, 1953; see also BIA, *In the Matter of J.*, 6, I. & N. Dec. 382, November 23, 1954. However, false statements made one week apart to obtain unemployment compensation, resulting in conviction on two counts under § 632.1(a) of the New York Labor Law, were held to constitute "single scheme of criminal misconduct." (BIA, *In the Matter of F.G. & C.D.*, Interim Decision 1019, September 11, 1959)

⁷⁰ BIA, *In the Matter of P.*, Interim Decision 1013, August 14, 1959. See also BIA, *In the Matter of B.*, 5, I. & N. Dec. 538, November 23, 1953.

⁷¹ See ch. 33, § 5(i).

⁷² BIA, *In the Matter of H.*, 6, I. & N. Dec. 614, May 20, 1955.

⁷³ *Pino v. London* (1955) 349 U. S. 901, 99 L. ed. 1239, 75 Sup. Ct. 576.

⁷⁴ BIA, *In the Matter of O.*, 7, I. & N. Dec. 539, August 20, 1957 see also BIA, *In the Matter of G.*, 7, I. & N. Dec. 171, April 20, 1956; Attorney General, *In the Matter of L.R.*, 7, I. & N. Dec. 318, February 18, 1957; and BIA, *In the Matter of R.R.*, 7, I. & N. Dec. 478, May 29, 1957.

⁷⁵ BIA, *In the Matter of J.*, 7, I. & N. Dec. 580, September 6, 1957.

(6) **Pardon.** An exception to deportability as a result of conviction for a crime after entry applies if a full and unconditional pardon has been granted by the President of the United States or by the Governor of any of the several States.⁷⁶

A conditional pardon by the Governor of any State, whether it contains a condition precedent or a condition subsequent, is ineffective to prevent deportation.⁷⁷ A pardon restoring civil rights is not a full and unconditional pardon.⁷⁸ A legislative pardon is not effective.⁷⁹ The pardon by a mayor is effective when the conviction was under a city ordinance.⁸⁰

(7) **Recommendation against deportation.** Another exception to deportability as a result of conviction for a crime after entry applies if the court sentencing the alien makes a recommendation to the Attorney General that the alien not be deported. This recommendation must be made by the court within thirty days after *first* imposing judgment or passing sentence. A sentencing judge's *nunc pro tunc*, i.e., retroactive recommendation against deportation, is therefore not effective unless made within thirty days of passing sentence.⁸¹

§ 8. Violators of report requirements.

(a) **Rule.** An alien is deportable if he fails to comply with the various report requirements applicable to aliens in the United States, i.e., the annual address report, the change of address report, or the address report required of nonimmigrants,⁸² unless he can establish to the satisfaction of the Attorney General that failure to register was reasonably excusable or was not willful. Also deportable are aliens convicted of filing an application for alien registration containing false statements or for procuring alien registration through fraud; and aliens convicted of violating the Foreign Agents Registration Act of June 8, 1938. (Section 241(a)(5))⁸³

⁷⁶ For a discussion of "pardon" granted by foreign governments for crimes committed abroad prior to entry see ch. 33, § 5(f).

⁷⁷ BIA, *In the Matter of C.*, 5, I. & N. Dec. 630, January 19, 1954.

⁷⁸ BIA, *In the Matter of R.*, Interim Decision 1083, June 9, 1960.

⁷⁹ BIA, *In the Matter of R.*, 5, I. & N. Dec. 612, January 14, 1954.

⁸⁰ BIA, *In the Matter of C.R.*, Interim Decision 939, June 25, 1958.

⁸¹ BIA, *In the Matter of M.G.*, 5, I. & N. Dec. 531, November 18, 1953; see also BIA, *In the Matter of B.*, 7, I. & N. Dec. 227, June 11, 1956; and BIA, *In the Matter of L.*, Interim Decision 1008, June 12, 1959. Judicial recommendation against deportation made at time of resentencing is held ineffective to avert deportation where sole purpose of court in vacating original judgment of conviction and sentence was to repair the omission to have made such recommendation initially within the time limitation set by § 241(b). (BIA, *In the Matter of B.*, Interim Decision 1084, June 21, 1960)

⁸² See ch. 43.

⁸³ For text see Appendix B.

(b) **Interpretation.** The terms "willful" and "reasonably excusable" should be given their plain and ordinary meaning. Intentional failure to furnish notification of address will not render an alien deportable if there was sufficient justification. The evidence of exculpatory circumstances must be established by credible evidence sufficiently persuasive to satisfy the Attorney General in the exercise of his reasonable judgment considering the proof fairly and impartially.⁸⁴

Liability to deportation under Section 241(a)(5) for failure to furnish notification of address is not defeated merely by the act of departing from the United States and making a new entry. However, when an alien is granted permission to re-apply after having been deported on this ground, he would not, upon return to the United States, again become deportable on the same charge by reason of his prior conduct.⁸⁵

§ 9. Subversives.

(a) **Rule.** An alien is deportable if he is or at any time has been, after entry, an anarchist, Communist, a member of, or affiliated with, any Communist or other totalitarian party or if he advocates or has advocated the economic, international, and governmental doctrines of world communism, or the establishment in the United States of a totalitarian dictatorship. (Section 241(a)(6))⁸⁶

(b) **Interpretation.** The deportation statute, in Section 211(a)(6), follows closely that of Section 212(a)(28) relating to aliens inadmissible for their membership in or affiliation with proscribed organizations or their advocacy of subversive doctrines. Reference is therefore made to the earlier discussion concerning the interpretation of the pertinent provisions by courts and administrative bodies.⁸⁷

An alien may be deportable as a subversive under Section 241(a)(6) because he has been a member of one of the deportable classes described therein "after entry"⁸⁸ or under Section 241(a)(1) because at the time of his entry he was inadmissible as a member of one of the subversive classes described in Sec-

⁸⁴ BIA, *In the Matter of B.*, 5, I. & N. Dec. 692, March 2, 1954. An alien who ascribes as his reason for not furnishing notification of address his fear of being picked up or token by immigration officers has not established that such failure to furnish notification of address was reasonably excusable or was not willful. (BIA, *In the Matter of M.*, 5, I. & N. Dec. 216, May 6, 1953)

⁸⁵ BIA, *In the Matter of S.*, 7, I. & N. Dec. 536, August 19, 1957; see also BIA, *In the Matter of R.G.*, Interim Decision 950, September 2, 1958.

⁸⁶ For text see Appendix B.

⁸⁷ See ch. 33, § 25.

⁸⁸ For definition of term "entry" see ch. 5, § 3(a).

tion 212(a)(28).⁸⁹ Deportation results from membership in a subversive class "after entry," irrespective of whether this entry was legal or whether the alien's deportability arose after an entry which was followed by departures and reentries of an alien.⁹⁰ An alien who entered the United States in 1945 is deportable under Section 241(a)(1) because of his excludability under the Act of October 16, 1918, as amended by the Internal Security Act of 1950, as a former member of the Communist Party of the United States.⁹¹

§ 10. **Other security risks.**—An alien is deportable if he is engaged in, or at any time after entry has engaged in, activities which are prejudicial to the public interest, or endanger the welfare, safety, or security of the United States, or in other activities subversive to the national security. (Section 241(a)(7))⁹²

§ 11. **Arrivals on nonsignatory lines.**

(a) **Rule and exception.**

(1) **Rule.** An alien is deportable if he has entered the United States from foreign contiguous territory or adjacent islands after having arrived there within two years prior to his entry into the United States on a vessel or aircraft which has

⁸⁹ See § 2, *supra*, and ch. 33, § 25.

⁹⁰ BIA, *In the Matter of H.*, Interim Decision 956, August 28, 1958, and BIA, *In the Matter of C.*, Interim Decision 1057, February 29, 1960.

⁹¹ BIA, *In the Matter of C.*, 6, I. & N. Dec. 219, July 23, 1954. In the case of an alien admitted for permanent residence in 1923 who was a member of the Communist Party of the United States from 1933 to 1936 and who departed from the United States in 1937, the Supreme Court held that he abandoned "all rights of residence here." In 1938, the alien, in possession of a quota immigration visa, was admitted for permanent residence. He remained in the United States except for a one-day visit to Mexico in 1939. When the alien's deportation was ordered under the Act of 1918, as amended by the Internal Security Act of 1950, on the ground that he had been a Communist Party member after entering the United States, the Supreme Court held that the entry referred to in the deportation statute was the one which the alien was "lawfully permitted to make" and "under which he claims the status and right of lawful presence that is sought to be annulled by his deportation." The Court, without exploring the effect of the alien's reentry from Mexico in 1939, held that the entry in 1938 must serve as basis of deportation proceedings since the alien claimed no right of lawful presence because of his entry in 1923 and the Immigration and Naturalization Service did not by the deportation order seek to annul any right of presence acquired under the 1923 entry. (*Bonetti v. Rogers* (1958) 356 U. S. 691, 2 L. ed. (2d) 1087, 78 Sup. Ct. 976. See also BIA, *In the Matter of H.*, *supra*, and BIA, *In the Matter of C.*, Interim Decision 1057, *supra*) Distinguishing *Bonetti*, the Board, in the latter decision, held that an alien who lawfully entered the United States in 1923, reentered illegally following a trip to Moscow in 1932 and last entered in 1945 as a member of the Armed Forces, and who was a member of the Communist Party in the United States from 1930 to 1937 and in 1946, is deportable under § 241(a)(6) because it was established that he was a member of the Communist Party of the United States after his entry in 1923.

⁹² For text see Appendix B. For a discussion of the related provisions in § 212(a)(27) and (29) applicable to inadmissible aliens see ch. 33, §§ 26, 27.

failed to sign a transportation agreement required by the Attorney General.

(2) **Exception.** Exempted from deportation for the reasons stated under (1) above are returning resident aliens and natives of nonquota countries of the Western Hemisphere. (Section 241(a)(10))⁹³

(b) **Interpretation.** The provisions of Section 241(a)(10) implement those of Section 212(a)(24) relating to inadmissible aliens. The latter provision, which bears on the interpretation of the deportation statute, is fully discussed earlier and therefore is referred to here.⁹⁴

§ 12. Narcotic drug addicts and violators.

(a) **Rule.** An alien is deportable if he:

(1) is, or after December 24, 1952, and subsequent to his entry into the United States, has been a narcotic drug addict; or

(2) at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana; or

(3) has been convicted of a violation of any law or regulation governing or controlling the taxing, production, compounding, dispensing, importation, or the possession for such purposes of any addiction-forming or addiction-sustaining opiate. (Section 241(a)(11), as amended)⁹⁵

(b) **Interpretation.**

(1) **Narcotic drug addict.** The term "narcotic drug addict" is not defined in the Act but recourse has been had to the definition of the term "addict" as used in 42 U.S.C. 201(k), F.C.A. 42 § 201(k), which reads as follows:

"The term 'addict' means any person who habitually uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of

⁹³ For text see Appendix B.

⁹⁴ See ch. 33, § 22.

⁹⁵ For text see Appendix B. The Narcotic Control Act of 1956 (70 Stat. 575) added conspiracy to violate any narcotic law, and the illicit possession of narcotics, as grounds for deportation. The Act of July 14, 1960 (74 Stat. 504) clarified that possession of marihuana is equivalent to possession of narcotic drugs. Prior to the latter amendment the courts held that an alien was not subject to deportation merely because he had been found guilty "of simple possession of marihuana." (Hoy v. Mendoza-Rivera (D.C., S.D. Cal., 1959) 267 Fed. (2d) 451)

such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction."

The Board of Immigration Appeals held this definition to be in accord with judicial decisions which recognized that one may be a user of narcotic drugs without being an addict.⁹⁶

(2) **Conviction.** For deportation purposes, a conviction exists where the following elements are all present:

- (i) there has been a judicial finding of guilt;
- (ii) the court takes action which removes the case from the category of those which are—actually or in theory—pending for consideration by the court (i.e., the court orders the defendant fined or incarcerated, or the court suspends sentence, or the court suspends the imposition of sentence); and
- (iii) the action of the court is considered a conviction by the State for at least some purpose. Consequently, an alien found guilty of a narcotic violation and ordered committed to the California Youth Authority has been "convicted" within the meaning of Section 241(a)(11).⁹⁷ Also, the judgment of a State court, after finding of guilt, that the proceedings be suspended and probation granted under the condition that the alien serve one year in the county jail constitutes a "conviction."⁹⁸

An alien's deportability based on his conviction of a State narcotics offense is not affected by a technical "expungement" or erasure of his conviction record as authorized by some State statutes after the alien has fulfilled the conditions of his probation.⁹⁹

There is no requirement in the clause described under (a)(3), above, that a conviction of narcotics violation must have occurred after entry. An alien is deportable whether the conviction occurred prior to, or subsequent to his last entry.¹

(3) **Finality of conviction.** In determining whether a conviction for a narcotic violation is final the same criteria must be applied here as are applicable to the second clause of Section 241(a)(4).² Where the imposition of the sentence is

⁹⁶ BIA, *In the Matter of K.C.B.*, 6, I. & N. Dec. 374, November 23, 1954, and BIA, *In the Matter of F.S.C.*, Interim Decision 948, August 11, 1958.

⁹⁷ BIA, *In the Matter of L.R.*, Interim Decision 985, February 20, 1959.

⁹⁸ Attorney General, *In the Matter of A.F.*, Interim Decision 1024, October 12, 1959.

⁹⁹ Attorney General, *In the Matter of A.F.*, *supra*.

¹ BIA, *In the Matter of P.*, 5, I. & N. Dec. 651, January 28, 1954.

² See § 7(b)(5), *supra*.

postponed, as contrasted with the suspension of the imposed sentence, the conviction is not final within the meaning of the immigration laws.³

(4) **Retroactivity.** The two clauses relating to narcotic convictions are retroactive.⁴ Also, the amendment of Section 241(a)(11) by the Narcotic Control Act of 1956 is retroactive. Consequently, an alien who, at the time of his conviction for unlawful possession of marihuana in 1956 was not deportable, is now deportable.⁵

(5) **Evidence.** Hospital records reflecting an alien's addiction to narcotics are admissible in evidence in deportation proceedings notwithstanding that they contain opinions, conclusions, and hourly floor notes made by nurses and other hospital personnel on duty. The weight to be assigned such evidence is for determination by the trier of the facts.⁶

§ 13. Prostitutes and procurers.

(a) **Rule.** An alien is deportable who:

(1) by reason of any conduct, behaviour or activity, at any time after entry, becomes a prostitute, procurer, or has engaged in any other unlawful commercialized vice as specified in Section 212(a)(12); or

(2) is, or at any time after entry has been, the manager, or is, or has at any time after entry, been connected with the management of a house of prostitution or any other immoral place. (Section 241(a)(12))⁷

(b) **Interpretation.** Section 241(a)(12) implements the similar provision of Section 212(a)(12) relating to inadmissible aliens.⁸ Reference is therefore made to that provision and its discussion. The following additional comments are offered:

(1) **Procuring male persons.** The procuring of male persons for the purpose of sexual intercourse with prostitutes falls within the purview of Section 241(a)(12).⁹

(2) **"Other immoral purpose."** The words "other immoral purpose" relating to the procuring of "persons for the

³ BIA, *In the Matter of J.*, 7, I. & N. Dec. 580, September 6, 1957; and BIA, *In the Matter of D.*, 7, I. & N. Dec. 670, March 6, 1958; see also § 7(b)(5), *supra*.

⁴ BIA, *In the Matter of I.*, 5, I. & N. Dec. 343, July 21, 1953.

⁵ BIA, *In the Matter of M.V.*, 7, I. & N. Dec. 571, September 5, 1957.

⁶ BIA, *In the Matter of T.*, Interim Decision 1045, January 14, 1960.

⁷ For text see Appendix B.

⁸ See ch. 33, § 9.

⁹ BIA, *In the Matter of R.M.*, 7, I. & N. Dec. 392, January 18, 1957.

purpose of prostitution or for any other immoral purpose," as used in Section 212(a)(12) mean an act of a like character with prostitution. Extra-marital relations short of concubinage, fall short of that definition. Consequently, an alien who engaged in extra-marital relations with a willing woman over a ten-day period is not deportable as one who has procured a person for "any other immoral purpose."¹⁰

§ 14. Promoters of illegal entrants.

(a) **Rule.** An alien is deportable if prior to, or at the time of any entry, or at any time within five years after entry, he has knowingly and for gain encouraged, induced, assisted, abetted or aided any other alien to enter or to try to enter the United States in violation of law. (Section 241(a)(13))¹¹

(b) **Interpretation.** The provision of Section 241(a)(13) implements the similar provision of Section 212(a)(31) relating to inadmissible aliens.¹²

(1) **Gain.** Anticipation of profit, no matter how small, constitutes "gain" within the meaning of the statute.¹³ "Gain" is present where the assisted aliens paid for gasoline and expenses.¹⁴

(2) **Transporting within the United States.** Transporting within the United States for gain aliens known to be illegally within this country does not constitute an act leading to deportation if the alien giving transportation did not know the transported aliens until after they were in the United States.¹⁵

§ 15. **Illegal owners of guns.**—An alien is deportable if he, at any time after entry, has been convicted of possessing or carrying illegally automatic or semi-automatic weapons or sawed-off shotguns. (Section 241(a)(14))¹⁶

§ 16. **Convicts for certain subversive activities.**—An alien is deportable if, within five years after entry, he has been convicted once, or at any time after entry has been convicted more than once, of violating the provisions of Title I of the Alien Registration Act of 1940, dealing with interference with the

¹⁰ BIA, *In the Matter of R.*, 6, I. & N. Dec. 444, December 14, 1954.

¹¹ For text see Appendix B.

¹² See ch. 33, § 7.

¹³ BIA, *In the Matter of P.G.*, 7, I. & N. Dec. 514, July 3, 1957.

¹⁴ BIA, *In the Matter of B.G.*, Interim Decision 962, November 14, 1958.

¹⁵ BIA, *In the Matter of I.M.*, 7, I. & N. Dec. 389, January 15, 1957.

¹⁶ For text see Appendix B.

military or naval forces of the United States, and subversive activities against the Government of the United States. (Section 241(a)(15) and (16))¹⁷

§ 17. Violators of laws relating to national security and defense.

—An alien is deportable if the Attorney General finds him to be an undesirable resident of the United States by reason of conviction for violation of specific penal laws, including the espionage laws, the laws prohibiting the manufacture of explosives in wartime, the Public Safety Act, the Selective Service Act, the Trading With the Enemy Act, and other specified laws of similar character. (Section 241(a)(17))¹⁸ This deportation provision, which incorporates earlier legislation,¹⁹ requires a finding of the alien's undesirability, in addition to his conviction under the specified statute. Consequently, the existence of the conviction must be followed by the conclusion that the conviction alone or other factors make the alien an undesirable resident.²⁰

§ 18. Aliens fraudulently married.

(a) Rule and exception.

(1) Rule. An alien is deportable if:

(i) he entered the United States after December 24, 1952 with an immigrant visa procured on the basis of a marriage entered into less than two years before this entry, and if the marriage is judicially annulled or terminated; or

(ii) it appears to the satisfaction of the Attorney General that he failed or refused to fulfill his marital agreement which, in the opinion of the Attorney General, was made after December 24, 1952 for the purpose of procuring the alien's entry as an immigrant. (Section 241(c))²¹

(2) Exception. Clause (i) does not apply if the alien can establish to the satisfaction of the Attorney General that his marriage was not contracted for the purpose of evading any provisions of the immigration laws. (Section 241(c))²²

(b) Interpretation.

(1) General. The provision of Section 241(c) has its origin in the Act of May 14, 1937, the so-called Gigolo Act²³

¹⁷ For text see Appendix B. For related grounds of deportation see §§ 9 and 10, *supra*.

¹⁸ For text see Appendix B.

¹⁹ Act of May 10, 1920 (41 Stat. 593).

²⁰ BIA, *In the Matter of S.*, 5, I. & N. Dec. 425, December 31, 1953.

²¹ For text see Appendix B.

²² For text see Appendix B.

²³ Section 3 (50 Stat. 165).

the purpose of which was to discourage marriages between immigrants on one hand and United States citizens or permanent resident aliens on the other hand for the sole purpose of securing nonquota or preference quota status under the immigration laws. The provision of existing law has broadened the scope of the earlier statute.²⁴

(2) **Burden of proof.** Under the first clause of Section 241(c), the Government has the burden of establishing alienage and that marriage, entry, and annulment took place as specified in the law. After the Government has established this, the burden is upon the alien to show that he is within the exemption by establishing that the marriage was not contracted for the purpose of evading the immigration law.²⁵

Under the second clause of Section 241(c) the Government must prove that its case rests on reasonable, substantial and probative evidence.²⁶

²⁴ For an interpretation of the Act of May 14, 1937 see BIA, *In the Matter of B.*, 3, I. & N. Dec. 102, December 4, 1957; BIA, *In the Matter of R.*, 4, I. & N. Dec. 345, April 16, 1951; and BIA, *In the Matter of V.*, 6, I. & N. Dec. 153, May 21, 1954. Deportation proceedings against an alien under the provisions of the Act of May 14, 1937 may be terminated under the authority contained in the first sentence of § 7 of the Act of September 11, 1957 if the alien was otherwise admissible at the time of entry except for the fraud imputed to her for her failure to fulfill her marital agreement subsequent to entry. (BIA, *In the Matter of S.*, 7, I. & N. Dec. 715, May 2, 1958; see also § 2(c), *supra*.)

²⁵ BIA, *In the Matter of T.*, 7, I. & N. Dec. 417, February 26, 1957; and BIA, *In the Matter of V.*, 7, I. & N. Dec. 460, April 5, 1957.

²⁶ BIA, *In the Matter of M.*, 7, I. & N. Dec. 601, November 12, 1957. Deportability is not established where the evidence shows that the alien was not at fault for the failure to fulfill the marital agreement.

CHAPTER 46

DEPORTATION PROCEDURE

SECTION.

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§ 1. Summary.—The administrative proceedings relating to the deportation of an alien may be divided into eight steps:

- (a) Issuance and service of an order to show cause;
- (b) Hearing before special inquiry officer;

- (c) Decision by special inquiry officer;
- (d) Warrant of arrest;
- (e) Appeal from decision of special inquiry officer;
- (f) Issuance of warrant of deportation;
- (g) Deportation of alien;
- (h) Voluntary departure or suspension of deportation in lieu of deportation.

§ 2. **Order to show cause.**—Every proceeding to determine the deportability of an alien in the United States is commenced by the issuance and service of an order to show cause, Form I-221, by the Immigration and Naturalization Service.¹

The order requires the alien, referred to as the respondent, to show cause why he should not be deported. It must contain a statement of the nature of the proceeding, the legal authority, a concise statement of factual allegations informing the alien of the acts or conduct alleged to be in violation of the law, and a designation of the charges against the respondent and of the statutory provisions alleged to have been violated. The order calls upon the alien to appear before a special inquiry officer for a hearing at a time not less than seven days after the service of the order. However, a hearing may be scheduled at an earlier time at the request of the alien or for reasons of public interest, safety or security.

The order to show cause may be issued by district directors, deputy district directors, or district officers in charge of investigations. Service of the order is made by delivery through an immigration officer or by mailing to the alien, return receipt requested. If the alien is confined in a penal or mental institution or hospital, a copy of the order is also served on the person in charge of the institution or hospital, and if the alien is incompetent only on such person. In the case of a child under sixteen years of age or a mentally incompetent alien, a copy of the order is served on the alien's guardian, near relative or friend. (8 CFR 242.1 and 242.3)

§ 3. **Warrant of arrest.**—At the commencement of any deportation proceedings, or at any time thereafter, up to the time the alien becomes subject to supervision after having been ordered deported as described below, he may be arrested and taken into custody under the authority of a warrant of arrest, issued

¹ The requirement that all deportation proceedings be commenced by the service of an order to show cause became effective on February 6, 1956. Before that date all deportation proceedings were initiated by the issue of a warrant of arrest. Deportation proceedings initiated prior to February 6, 1956, will be completed under the former procedure. (8 CFR 242.23)

by a district director, whenever it appears that his arrest is necessary or desirable.

Pending final determination of deportability the district director may direct that the alien be
continued or detained in custody; or
released from custody under bond; or
released on conditional parole. (Section 242(a), 8 CFR 242.2 and 242.3)

The alien is promptly notified in writing of any determination made in his case and may appeal to the Board of Immigration Appeals from any determination relating to bond, parole or detention. The appeal is taken by filing a notice of appeal with the district director within five days after the date when written notification of the determination is delivered in person or mailed to the alien. The filing of such an appeal does not disturb the custody of the alien or stay the administrative proceedings or deportation. This appeal does not lie when the Service notifies the alien that it is ready to execute the order of deportation and takes him into custody for that purpose. (8 CFR 242.2(b))

Any competent court has authority to review and revise a determination of the Immigration and Naturalization Service concerning the alien's detention, release on bond or parole, if it is conclusively shown in habeas corpus proceedings that the Attorney General is not proceeding with reasonable dispatch. (Section 242(a))

§ 4. Hearing before special inquiry officer.

(a) **Responsibilities of special inquiry officer.** A special inquiry officer is assigned to conduct the deportation hearing. He has authority to determine deportability, to suspend deportation and to authorize voluntary departure. Deportability in any case may be determined only upon a record made in the proceeding before a special inquiry officer, at which the alien must be given reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present.² In the latter case the Attorney General is re-

² A deportation hearing may proceed and a determination be made despite the absence of the respondent when it is shown that he has been served with an order to show cause and duly notified to appear but has refused to appear without reasonable cause. (BIA, *In the Matter of S.*, 7, I. & N. Dec. 529, August 2, 1957)

The requirements of a fair hearing involving an alien of unsound mind have been met in deportation proceedings where notice was served on the alien and his wife, arrangements were made to protect the alien's interests by having a doctor in attendance at the hearing, and the alien was represented by legal counsel who was given the privilege of introducing evidence and cross-examining witnesses. (BIA, *In the Matter of H.*, 6, I. & N. Dec. 358, November 16, 1954)

quired to prescribe necessary and proper safeguards for the rights and privileges of the alien. A special inquiry officer has to withdraw at any time if he deems himself disqualified. In such case another special inquiry officer is assigned to complete the case. (Section 242(b) and 8 CFR 242.8)

(b) Opening of hearing. At the opening of the hearing the special inquiry officer is required to:

- (1) place the alien under oath;
- (2) advise him of his right of representation by counsel, at no expense to the Government;
- (3) advise the alien that he will have a reasonable opportunity to examine and object to the evidence against him, present evidence in his own behalf, and to cross-examine witnesses presented by the Government;
- (4) read the factual allegations and the charges to the alien and explain them in non-technical language; and
- (5) enter the order to show cause as an exhibit in the record. (8 CFR 242.16(a))³

(c) Pleading by alien. The alien is required to plead to the order to show cause by stating whether he admits or denies the factual allegations and his deportability. If the alien admits the factual allegations and his deportability and if no issues of law or fact remain unresolved, the special inquiry officer may determine that deportability has been established by the alien's admission. (8 CFR 242.16(b))

(d) Assignment of examining officer. If the alien denies the factual allegations and his deportability, or if issues of law or fact remain unresolved, the special inquiry officer requests the assignment of an examining officer who will present the evidence on behalf of the Government as to the alien's deportability. The examining officer will also inquire into the alien's eligibility for discretionary relief from deportation, if requested, and will develop other pertinent information. (8 CFR 242.16(c) and 242.9)

An examining officer may also be assigned to any other case at the request of the special inquiry officer or in the discretion of the district director. (8 CFR 242.9(b))

(e) Additional charges. An examining officer may, at any time during a hearing, lodge additional charges of deportability,

³ Unfavorable inference from alien's refusal to testify can be drawn only after a *prima facie* case of deportability has been established. Record should reflect that the alien was requested to give testimony, that there was a refusal to testify, and the ground of the refusal. (BIA, *In the Matter of J.*, Interim Decision 1052, February 23, 1960)

including factual allegations, against the alien. A special inquiry officer must explain these charges to the alien in non-technical language and advise him, if he is not represented by counsel, that he may be so represented. The alien may be granted continuance of his case to secure representation or to meet the additional charges. (8 CFR 242.16(d))

(f) **Postponement and adjournment of hearing.** For good cause a reasonable postponement or adjournment may be granted in any deportation hearing. A continuance of the hearing for the purpose of allowing the alien to obtain representation is not granted more than once unless a sufficient cause for the granting of more time is given. (8 CFR 242.13)

(g) **Record of hearing.** The hearing before the special inquiry officer including the alien's pleading, the testimony, the exhibits, the special inquiry officer's decision and all written orders, motions, appeals and other papers filed in the proceedings constitute the record in the case. The hearing is recorded verbatim except for statements made off the record with the permission of the special inquiry officer. In his discretion the special inquiry officer may exclude from the record any argument in connection with motions, applications or objections, but in such case the person affected may submit a brief. (8 CFR 242.15 and 242.8)

§ 5. **Decision by special inquiry officer.**—A determination of deportability is not valid unless based on reasonable, substantial and probative evidence. (Section 242(b)(4) and 8 CFR 242.14)⁴ The decision of the special inquiry officer may be oral or written and must contain a summary of the evidence and of the findings of fact and conclusions of law as to the alien's deportability. It also must contain a discussion of the evidence relating to the alien's eligibility for any discretionary relief requested and the reasons for granting or denying the application. The order of the special inquiry officer, at the end of the decision, is either:

- (1) that the alien be deported; or
- (2) that the proceedings be terminated; or
- (3) that the alien's deportation be suspended; or
- (4) that the alien be granted voluntary departure in lieu of deportation; or

⁴ Where timely objection is made by an alien at a hearing to the receipt in evidence of recorded testimony previously given by others in a criminal prosecution against such alien, she has a right to be confronted with the witnesses for purposes of cross-examination and, where the witnesses are available and not produced, their statements are neither competent nor probative evidence to sustain a finding of deportability. (BIA, *In the Matter of M.*, 6, I. & N. Dec. 300, September 3, 1954)

- (5) any combination of these orders in the alternative; or
- (6) that other action be taken at the proceedings as may be required for the appropriate disposition of the case. (8 CFR 242.17 and 242.18)

A written decision is served on the alien and the examining officer if one is assigned to the case by the district director. An oral decision is stated at the conclusion of the hearing by the special inquiry officer in the presence of the alien and the examining officer if one is assigned to the case. Copy of the oral decision is served in the same manner as a written decision unless appeal has been waived.

A summary decision which does not require a summary of the evidence, findings of fact or conclusions of law, may be entered if it is based on the alien's pleading and if he does not apply for any discretionary relief other than voluntary departure if the latter is granted. (8 CFR 242.17(b) and 242.19(c))

§ 6. Finality of order—Appeal.—The order of the special inquiry officer is final unless an appeal is taken to the Board of Immigration Appeals by the alien or by the examining officer, or unless the Commissioner of Immigration and Naturalization or any other authorized officer of the Service requires that the case be certified to the Board. The Board itself may require certification. (8 CFR 242.20)

An appeal must be taken within ten days after the mailing of a written decision or of a typewritten copy of an oral decision, or the service of a summary decision. (8 CFR 242.21(c)) An appeal is filed on Form I-290A, "Notice of Appeal."

The fee for the filing of an appeal is \$25. (8 CFR 103.7(c)) However, the Board of Immigration Appeals may authorize the prosecution of an appeal without prepayment of fee in any case in which the alien is unable to pay the fee. Such alien has to file with the notice of appeal an affidavit stating his belief that he is entitled to redress and his inability to pay, and has to request permission to prosecute his appeal without prepayment of the fee. (8 CFR 3.3(b))

§ 7. Supervision of aliens ordered deported.—An alien against whom an order of deportation has been outstanding for more than six months is subject to supervision under regulations of the Attorney General. An alien, while under supervision, may be required:

- (a) to appear from time to time before an immigration officer for identification;

(b) to submit, if necessary, to medical and psychiatric examination at the expense of the Government;

(c) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information as the Attorney General may deem fit and proper⁵ and

(d) to conform to such reasonable written restrictions on his conduct or activities as the Attorney General prescribes in his case.

An alien who fails to comply with the conditions of supervision imposed on him may, on conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both. (Section 242(d))

§ 8. Willful failure to depart.—An alien who has been found deportable as a member of the criminal, subversive, narcotic, or immoral classes of deportable aliens, and who willfully fails to depart from the United States within six months from the date of the final order of deportation, or who willfully fails or refuses to make timely application in good faith for travel or other documents necessary to his departure, may be found guilty of a felony and imprisoned not more than ten years.

The court may for good cause suspend the sentence of such an alien and order his conditional release. In determining whether release appears justified the court will take into account such factors as:

(a) the age, health, and period of detention of the alien;

(b) the effect of the alien's release on the national security and public peace or safety;

(c) the likelihood of the alien's resuming or following a course of conduct which made or would make him deportable;

(d) the character of the efforts made by the alien and by representatives of the country or countries to which his deportation is directed to expedite the alien's departure from the United States;

(e) the reasons for the inability of the Government of the United States to secure passports, or other travel docu-

⁵ Section 242(d) confers upon the Attorney General power to supervise the alien to make sure he is available for deportation, and no further power. Clause (c) is to be interpreted so as to limit the statute to authorizing all questions reasonably calculated to keep the Attorney General advised regarding the continued availability for departure of aliens whose deportation is overdue. (*United States v. Witkovich* (1957) 353 U. S. 194, 1 L. ed. (2d) 765, 77 Sup. Ct. 779)

ments, or deportation facilities from the country or countries to which the alien has been ordered deported; and

(f) the eligibility of the alien for discretionary relief under the immigration laws. (Section 242(e))

§ 9. Warrant of deportation.—In any case in which an order of deportation becomes final a warrant of deportation is issued by a district director. The district director exercises the authority of the Attorney General to designate the country to which the alien is to be deported. He also determines whether an alien's mental or physical condition requires the employment of a person to accompany him. (Section 243 and 8 CFR 243.1)

No appeal lies from the decision of the district director regarding the country to which the alien is to be deported.

§ 10. Country to which alien is deported.—In determining the country to which an alien is to be deported the law requires that the alien's preference be considered as far as practicable. The law specifies the following procedure:

(a) An alien is to be deported to a country promptly designated by him if that country is willing to accept him, unless the Attorney General finds that deportation to such country is prejudicial to the interests of the United States. The alien may designate a country contiguous to the United States only if he is a native, citizen, or former resident of such country.

(b) Unless the country designated by the alien expresses within three months its willingness to accept him, the alien may be deported to any country of which he is a subject, national, or citizen.

(c) If the government of such country fails to advise the Attorney General within three months that it is willing to accept the alien, the Attorney General may, without necessarily giving any priority or preference because of the order in which they are listed in the law, direct deportation either

(1) to the country from which the alien last entered the United States;⁶

(2) to the country from which the alien embarked for the United States;

(3) to the country in which he was born;

⁶ Hong Kong is a "country" to which aliens may be deported. Aliens who had entered the United States from Hong Kong can be deported to Hong Kong. (*Ying v. Rogers* (U.S. D.C., D.C., 1960) 180 F. Supp. 618)

(4) to the country in which the place of his birth is situated at the time he is ordered deported;

(5) to any country in which he resided before entering the country from which he entered the United States;

(6) to the country which had sovereignty over the alien's birthplace at the time of his birth; or

(7) if deportation to any of these places or countries is impractical, inadvisable, or impossible, then to any country which is willing to accept the alien into its territory. (Section 243(a))

§ 11. Stay of deportation.—The district director having administrative jurisdiction over the place where the alien is located may, for good cause, stay the execution of a warrant of deportation. He may grant a stay on his own initiative or on the request of the alien.

A request for a stay of deportation by the alien must be filed in writing with a district director, and should be supported by an affidavit setting forth the reasons for the request and by other statements which may support the request. (8 CFR 243.3(b)) It must be accompanied by a fee of \$25 unless the applicant requests permission to prosecute the stay without prepayment of such fee because he is unable to pay it. The district director may, in such case, stay deportation without prepayment of the fee. (8 CFR 243.31)

No appeal lies from a denial of a request for a stay of deportation. However, the Board of Immigration Appeals, by such denial, is not precluded from granting a stay in connection with a motion to reopen or a motion to reconsider an order of deportation. (8 CFR 243.3(b))⁷

§ 12. Withholding of deportation.

(a) **Rule.** The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which, in his opinion, the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason. (Section 243(h))⁸

(b) **Procedure.** If an alien requests stay of deportation upon a claim he would be subject to physical persecution if deported

⁷ See ch. 4 for procedure before the Board of Immigration Appeals.

⁸ An alien paroled into the United States under the provisions of § 212(d)(5) is not entitled to relief under § 243(h) since parole does not alter an alien's status as an excluded alien or otherwise bring him "within the United States" in the meaning of § 243(h). (*Leng Moy Ma v. Borber* (1958) 357 U. S. 185, 2 L. ed. (2d) 1246, 78 Sup. Ct. 1072) See ch. 38 for a discussion of parole.

to the country designated, he is requested to appear before a special inquiry officer for interrogation under oath. He may submit any evidence in support of his claim. Upon completion of the interrogation the special inquiry officer submits to a regional commissioner a written memorandum of his findings with all the evidence and information submitted by the alien. The alien is served with a copy of the special inquiry officer's memorandum and is allowed five days from the date of service within which to submit written representations to the regional commissioner. If the alien refuses to appear before a special inquiry officer or waives his appearance, all pertinent evidence and available information is submitted directly to the regional commissioner.

(c) **Decision.** Final decision whether to withhold deportation and, if so, for what period of time, is made by the regional commissioner. (8 CFR 243.3(b)(2))⁹

(d) **Fee.** A fee of \$25 must accompany the request for a stay of deportation. The regional commissioner may, in his discretion, withhold deportation without prepayment of this fee if the alien is unable to pay it and makes an appropriate showing. (8 CFR 243.31)

§ 13. **Voluntary departure.**—Certain aliens who admit being deportable may, under the conditions described below, be permitted to depart voluntarily from the United States. A deportable alien who has departed from the United States voluntarily under such permission, without having been ordered deported, is not considered to have been deported in pursuance of law.

(a) **Voluntary departure prior to commencement of hearing.**

(1) **Qualification.** A deportable alien may be permitted to depart voluntarily from the United States, at his own expense, without deportation proceedings, if he admits his deportability and is not within the criminal, subversive, narcotic or

⁹ The decision as to whether an alien's deportation should be withheld because he would be subjected to physical persecution in the country of deportation rests wholly in the Attorney General's or his delegate's administrative judgment and opinion for which the courts may not substitute their judgment.

Whether a diplomatic inquiry should be addressed to the government of a foreign country to determine whether a certain alien would there be subjected to physical persecution is a purely discretionary matter and the Attorney General cannot be held to have acted arbitrarily in not making such an inquiry before deciding that an alien would not be subjected to persecution, unless it is shown that it is the general practice of the United States Government to make such inquiries. (U.S. ex rel. Dolenz v. Shaughnessy (C.C.A. 2, 1953) 206 Fed. (2d) 392; and U. S. ex rel. Moon v. Shaughnessy (C.C.A. 2, 1954) 218 Fed. (2d) 316) See also Kam Ng v. Pilliod (C.C.A. 2, 1960) 279 Fed. (2d) 207.

immoral classes of deportable aliens. If such alien is unable to depart voluntarily because of lack of funds, and if it is found that his removal without the institution of deportation proceedings would be in the best interest of the United States, the expense of his removal may be paid by the Government. (Section 242(b))

(2) **Application.** Application for permission to depart voluntarily may be made at an office of the Immigration and Naturalization Service any time prior to the commencement of the hearing under an order to show cause.

(3) **Decision.** District directors, district officers who are in charge of investigations, officers in charge, and chief patrol inspectors may deny or grant the application and determine the conditions under which the alien's departure must be effected. A denial of an application for voluntary departure may not be appealed, but the denial does not prejudice the alien's right to seek relief from deportation under other provisions of law.

(4) **Revocation.** Officers authorized to act on applications for voluntary departure may revoke the grant without notice if it is ascertained that the application should not have been granted. (8 CFR 242.5)

(b) **Voluntary departure subsequent to commencement of hearing.**

(1) **Qualification.** An alien under deportation proceedings may be permitted to depart voluntarily from the United States at his own expense in lieu of deportation if he is not within the criminal, subversive, narcotic, or immoral classes of deportable aliens or, if he is within such classes, if he would also fall within the fourth or fifth category of aliens eligible for suspension of deportation.¹⁰ The alien must be able to establish that he is, and has been, a person of good moral character¹¹ for at least five years immediately preceding his application for voluntary departure. (Section 244(e))

The alien must establish that he is willing and has the immediate means with which to depart promptly from the United States. (8 CFR 244.1)

¹⁰ See ch. 47, § 4.

¹¹ See ch. 5, § 3(d) for definition of term "good moral character."

The five-year period of good moral character which an alien must establish to qualify for voluntary departure under § 244(e) does not apply to an alien deportable as a criminal or as a narcotic drug addict or violator under § 241(a)(4) and (11). To qualify for voluntary departure under § 244(e), an alien deportable under § 241(a)(4) and (11) must also show that he is within the provisions of § 244(a)(4) and (5). (See ch. 47, § 4) Hence, he is required to establish good moral character and continuous

(2) **Application and decision.** The application for voluntary departure, if made subsequent to the commencement of the hearing, must be submitted to the special inquiry officer. He is authorized to grant or deny the application. (8 CFR 244.1) His decision may be appealed under the procedure described in § 6, above.

(3) **Extension of time to depart.** An alien whose application for voluntary departure was made subsequent to the commencement of the hearing, may request an extension of time within which to depart by filing an application with the district director having jurisdiction over the alien's place of residence. The district director's decision is served on the alien by written notice. There is no appeal from this decision. (8 CFR 244.2)

(c) **Permission to depart when ordered deported.** To be distinguished from voluntary departure is the permission to depart once an order of deportation has been issued. District directors may, in their discretion, permit an alien who has been ordered deported to leave the United States at his own expense and to a destination of his own choice. An alien who has so left the United States is considered to have been deported in pursuance of law. (Section 101(g) and 8 CFR 243.3(c))

§ 14. **Deportation of certain foreign government officials and international organization aliens.**—Nonimmigrants in the "A-1" category, i. e., ambassadors, public ministers, and career diplomatic and consular officers and the members of their immediate families¹² and nonimmigrants in the "G-1" category, i. e., principal resident representatives of a foreign government to designated international organizations, resident members of their staff and members of their immediate families,¹³ may be required to depart from the United States for failure to maintain their status only with the approval of the Secretary of State. This approval is not required in the case of these aliens if they are subject to deportation because they fall within the class of subversives or other security risks described in Sections 9 and 10 of Chapter 45. (Section 241(e))

§ 15. **Administrative deportation procedure exclusively prescribed by Immigration and Nationality Act.**

(a) **Deportation procedure and Administrative Procedure Act.** The procedure prescribed by the Immigration and Na-

residence in the United States for a ten-year period immediately preceding the date of his application for relief. (BIA, *In the Matter of V.*, 6, I. & N. Dec. 723, September 21, 1955)

¹² See ch. 18.

¹³ See ch. 19.

tionality Act is the "sole and exclusive procedure" for determining the deportability of an alien under administrative processes. The decision of the Attorney General as to an alien's deportability is final. (Section 242(b)) A deportation hearing held in conformity with the provisions of the Immigration and Nationality Act is within the pattern and meets the standards of the Administrative Procedure Act.¹⁴ Such a hearing conducted by a special inquiry officer who had not previously participated in the investigative or prosecutive phases of the case meets the current standards of procedural due process as contemplated by the Constitutional safeguards of the Fifth Amendment.¹⁵ The Supreme Court confirmed this view when it held that the provisions of the Administrative Procedure Act relating to hearings before administrative agencies are inapplicable to deportation hearings under the Immigration and Nationality Act and rejected the contention that the control over the hearing officer exercised by the Immigration and Naturalization Service deprived the hearing of fairness and made it violative of due process.¹⁶

(b) **Exclusion and deportation procedure—A comparison.** A comparison of deportation proceedings with exclusion proceedings shows that in a deportation proceeding the burden of establishing deportability is upon the Immigration and Naturalization Service, while in exclusion proceedings the burden of proving admissibility is upon the applicant for admission. In both proceedings an alien is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine. In deportation proceedings, the law specifically requires the alien be given reasonable notice of the nature of the charges and of the time and place at which proceedings will be held. There is no corresponding provision relating to exclusion cases. In deportation proceedings, the law requires the decision of deportability to be made on reasonable, substantial and probative evidence. There is no similar expressed provision relating to exclusion cases. Both exclusion and deportation proceedings are held before a special inquiry officer whose determination, with certain exceptions, is reviewable.¹⁷

¹⁴ 60 Stat. 237, 5 U.S.C. 1001, F.C.A. 5 § 1001; BIA, *In the Matter of M., S. I. & N.* Dec. 261, June 1, 1953.

¹⁵ BIA, *In the Matter of R., S. I. & N.* Dec. 589, December 29, 1953. That alien was awaiting trial on a criminal indictment at the time of the deportation proceedings did not preclude a fair hearing on the deportation charge relating to prior criminal convictions. (BIA, *In the Matter of M.*, Interim Decision 1048, February 1, 1960) In this decision the Board also examined other procedural matters, including abuse of discretion by special inquiry officer; proceedings conducted in atmosphere of prejudice; and the quantum of proof.

¹⁶ *Marcello v. Bonds* (1955) 349 U. S. 302, 99 L. ed. 1107, 75 Sup. Ct. 757.

¹⁷ BIA, *In the Matter of K.H.C., S. I. & N.* Dec. 312, June 30, 1953.

§ 16. Court review of deportation proceedings.

(a) **Constitutional protection.** The Supreme Court has consistently held that "aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."¹⁸ In another decision the Court said: "It is well established that if an alien is a lawful permanent resident of the United States and remains physically present there he is a person within the protection of the Fifth Amendment."¹⁹

(b) **Habeas corpus.** Habeas corpus proceedings have traditionally been the method by which an alien could challenge an order of deportation. By its nature, habeas corpus is available only after the alien is arrested, detained, or technically in custody and permits only an examination as to whether administrative action was taken after a fair hearing, supported by substantial evidence and based on statutory grounds.

Prior to the Immigration and Nationality Act the courts consistently held that the provisions of Section 19 of the Immigration Act of 1917, and its predecessor statutes, pronouncing administrative decisions in deportation proceedings to be final, deprived the courts of the authority to review the decision of the executive officers in deportation proceedings, except in habeas corpus.²⁰ The Supreme Court reaffirmed this view as late as 1953 when it held that habeas corpus was the only available remedy for testing deportation orders under the Immigration Act of 1917 and that deportation orders remain immune to direct attack by the broader judicial review provided for in Section 10 of the Administrative Procedure Act.²¹

(c) **Declaratory judgment action.** After the enactment of the Immigration and Nationality Act the form of judicial action available in deportation cases was significantly broadened. In 1955 the Supreme Court ruled that deportation orders issued under the Immigration and Nationality Act can be judicially reviewed in actions for declaratory relief under Section 10 of

¹⁸ *The Japanese Immigrant Case* (1903) 189 U. S. 86, 100, 101, 47 L. ed. 721, 23 Sup. Ct. 611 and *Shaughnessy v. U.S. ex rel. Mezei* (1953) 345 U. S. 206, 97 L. ed. 956, 73 Sup. Ct. 625.

¹⁹ *Kwong Hai Chew v. Colding* (1953) 344 U. S. 590, 596, 97 L. ed. 576, 73 Sup. Ct. 472. See ch. 37, § 9 for a discussion of court review of exclusion orders.

²⁰ *The Japanese Immigrant Case*, *supra*; *Bridges v. Wixon* (1945) 326 U. S. 135, 89 L. ed. 2103, 65 Sup. Ct. 1443.

²¹ "Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof." (60 Stat. 243, 5 U.S.C. 1009, F.C.A. 5 § 1009); *Heikkila v. Barber* (1953) 345 U. S. 229, 97 L. ed. 972, 73 Sup. Ct. 603.

the Administrative Procedure Act.²² The statement in Section 242(b) that the decision of the Attorney General ordering an alien deported from the United States "shall be final" was held by the court to relate to the administrative processes of deportation but not to preclude judicial review of the Attorney General's decision. The Court differentiated between deportation orders entered under previous statute and those under the Immigration and Nationality Act in the light of Section 12 of the 1946 Administrative Procedure Act which provides that "no subsequent enacted legislation shall be held to supersede or modify the provisions of this chapter except to the extent that such legislation shall do so expressly." The provision of the 1952 Act that deportation orders of the Attorney General "shall be final" was not held to expressly supersede Section 10 of the Administrative Procedure Act. In the same decision the Court gave the alien a choice where to institute legal action. Proceedings for declaratory relief may be brought against the Commissioner of Immigration and Naturalization or the district director in whose district the case is being processed.

Access to judicial review of deportation orders under the Administrative Procedure Act does not disturb the alien's right to the more limited habeas corpus proceedings once he is taken into custody and has exhausted all administrative remedies.

²² *Shaughnessy v. Pedreiro* (1955) 349 U. S. 48, 99 L. ed. 868, 75 Sup. Ct. 591.

The Supreme Court, in the *Pedreiro* case, does not discuss scope of review but it speaks of "respondent's right to full judicial review of his deportation order." (See Ball, "Judicial Review in Deportation and Exclusion Cases," *Interpreter Releases*, June 10, 1957, p. 132)

CHAPTER 47

SUSPENSION OF DEPORTATION

SECTION.

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5. Certain nonquota immigrants ineligible for suspension.
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§ 1. Summary and background.—The suspension of deportation provisions of the law, first introduced by the Alien Registration Act of 1940, permit a deportable alien, under certain conditions, to apply to the Attorney General for suspension of deportation and adjustment of his status to that of an alien admitted for permanent residence. If the Attorney General finds that the alien meets the requirements of the law he may, in his discretion, approve the alien's application and submit his case to Congress. If Congress concurs in the Attorney General's favorable action, the Attorney General may adjust the alien's status to that of a permanent resident alien. (Section 244)

In formulating the conditions for suspension of deportation under the Immigration and Nationality Act, Congress was influenced, in the words of its Committees, by "the progressively increasing number of cases in which aliens are deliberately flouting our immigration laws by the process of gaining admission into the United States illegally or ostensibly as non-immigrants but with the intention of establishing themselves in a situation in which they may subsequently have access to some administrative remedy to adjust their status to that of permanent residents."¹

¹ House of Representatives, Report No. 1365, 82nd Congress, Second Session, pp. 62, 63; Senate Report No. 1137, 82nd Congress, Second Session, p. 25.

Consequently, the Immigration and Nationality Act, compared with earlier legislation, tightened drastically the requirements of suspension of deportation. In one respect, however, the Act has broadened the scope of the suspension of deportation procedure, in that it has made eligible for suspension certain classes of aliens heretofore ineligible, including former subversives, criminals, immoral persons, and physical and mental defectives.

The law establishes five categories of deportable aliens, described in Section 4, below, who may apply for suspension of deportation. In addition to the distinct requirements of qualification established separately for each of these categories, every applicant for suspension of deportation must meet the test of good moral character and of hardship as described in Section 3, below.

§ 2. Application.—Application for suspension of deportation must be filed on Form I-256A at any time during the deportation hearing.² The alien has the burden of establishing his eligibility for discretionary relief. (8 CFR 242.16(e))³

The fee for the filing of each application for suspension of deportation is \$25. (Section 281(4))

While separate applications must be executed for each person applying for suspension of deportation, all applications from a family unit may be submitted together and supported by the same documentary evidence if practicable. (Instructions, Form I-256A)

§ 3. Qualification requirements.

(a) **Summary.** Deportable aliens who are eligible for suspension of deportation are divided into five categories, depending on the date of their arrival in the United States, the seriousness of the ground for their deportation, and whether such ground existed before or after entry into the United States.

In the case of aliens deportable on lesser grounds, the Attorney General may adjust an alien's status to that of a permanent

² An application for suspension of deportation must be submitted during the deportation hearing in order to be timely. The contention that the alien may file such an application at any time prior to the entry of a final order of deportation by the Board of Immigration Appeals is not tenable since the requirement that an alien shall not have been served with a final order of deportation sets forth a condition to be met and does not authorize the filing of the application at any particular time. (BIA, *In the Matter of M.*, 5, I. & N. Dec. 472, October 9, 1953)

³ An applicant for the exercise of discretion has the duty of making a full disclosure of all pertinent information. Where, under a claim of privilege pursuant to the Fifth Amendment, an applicant refuses to testify concerning prior false claims to United States citizenship, denial of his application is justified on the ground that he has failed to meet the burden of proving his fitness for relief. (BIA, *In the Matter of Y.*, 7, I. & N. Dec. 697, March 26, 1958)

resident in the absence of Congressional disapproval within a stated period of time, while in the more serious cases the Attorney General may take such action only if Congress takes positive and favorable action within a stated period of time. In the absence of such action he has to deport the alien.

All applicants for suspension of deportation must meet three basic tests:

(1) A period of physical presence in the United States varying from five, seven, to ten years depending on the category of eligibility;

(2) Proof of good moral character during the period the applicant is required to have been in the United States; and

(3) Exceptional and extremely unusual hardship resulting from deportation.

These three general qualification requirements are discussed below.

(b) **Physical presence.** In order to be eligible for suspension of deportation the applicant must show that he was actually residing and physically present in the United States for the period required by the subsection of Section 244 under which he applies for relief. The Board of Immigration Appeals laid down the basic interpretation that "physically present in the United States for a continuous period," as used in Section 244(a), means "that an alien must have been physically present in the United States without any absence, no matter how brief, for the continuous period specified in the statute."⁴ Consequently, service on vessels of United States registry does not meet the requirements of the statute since actual physical presence is required and not constructive presence or residence.⁵ However, the Board held that an alien who, while residing in the United States, is inducted into the Armed Forces of this country and serves honorably is to be regarded as being physically present in the United States during his service even though part or all of his tour of duty is in a foreign country.⁶

(c) **Good moral character.** An alien applying for suspension of deportation must show that during the period he is required to have been in the United States, he has been a person of good moral character. In determining whether a person is of

⁴ BIA, *In the Matter of P.*, 5, I. & N. Dec. 220, May 8, 1953.

⁵ BIA, *In the Matter of Z.A.H.*, 5, I. & N. Dec. 298, June 23, 1953.

⁶ BIA, *In the Matter of J.M.D.*, 7, I. & N. Dec. 105, January 31, 1956.

good moral character the Attorney General is guided by the definition of the term "good moral character" as contained in Section 101(f).⁷

(d) **Hardship test.**

(1) **General rule.** An alien qualifies for suspension only if his deportation, in the opinion of the Attorney General, would result in "exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence." (Section 244(a))⁸ Before the Immigration and Nationality Act, the law required that the deportation of the alien result in "serious economic detriment" to the alien's spouse, parent, or child; and in the case of an alien with seven years' residence in the United States, no proof of hardship was required at all.

In formulating the requirement that the hardship resulting from deportation must be not only unusual but "exceptional and extremely unusual," the Congressional committees were aware of the fact "that in almost all cases of deportation, hardship, and frequently unusual hardship, is experienced by the alien or the members of his family who may be separated from the alien." They felt, however, that law-abiding aliens who await their turn on the quota waiting lists abroad have a prior claim, and consequently that suspension of deportation should be permitted, in the words of the Senate committee, only "in the very limited category of cases in which the deportation of the alien would be unconscionable."⁹

(2) **Determining factors.** The Board of Immigration Appeals, in a series of decisions, held that in determining whether or not the deportation of an alien would result in "exceptional and extremely unusual hardship" within the meaning of Section 244(a), some of the factors to be considered are:

- (i) length of residence in the United States, including consideration of the manner of entry and of whether the alien entered the United States prior to the enactment of a suspension statute;
- (ii) family ties;
- (iii) possibility of obtaining a visa abroad;
- (iv) financial burden on the alien of having to go abroad to obtain a visa; and
- (v) the health and age of the alien.

⁷ See ch. 5, § 3(d).

⁸ See ch. 5, § 3(e) and (f) for definition of terms "spouse" and "parent," and ch. 12 § 2(b) for definition of term "child."

⁹ Senate Report No. 1137, 82nd Congress, Second Session, p. 25.

It is the view of the Board that it is not necessary that all of these factors be present in every case in order to find the necessary degree of hardship, but at least several factors should be present.¹⁰

(3) **Precedent decisions.** The Board's application of these rules is illustrated by the following precedent decisions:

"Exceptional and extremely unusual hardship" would result to an alien within the meaning of Section 244(a) because of inability to obtain a visa (being excludable under Section 212(a)(19)), long residence in the United States and long absence from her native country, even though the alien is in good health, able to travel, and is from a country with an open quota.¹¹

The deportation of a native and citizen of the Philippines who last entered the United States as a visitor in 1945, but who has been in the United States for sixteen of the last twenty-three years, would result in "exceptional and extremely unusual hardship" to him and to the four United States citizens dependent on him for support due to their hazardous financial situation, the length of the trip he would be required to make in order to obtain a visa and the fact that the alien has spent nearly half his life in the United States.¹²

In the case of a native and citizen of Syria who entered the United States in 1924 from Mexico by wading the Rio Grande the Board held that his deportation would result in "exceptional and extremely unusual hardship" to him in view of the length of time he has resided in the United States, the fact that he entered prior to the enactment of any law providing for registry or suspension, the improbability of his being able to retain in his absence a grocery store which he operates personally, and the difficulty of obtaining a visa abroad. The Board reached this conclusion notwithstanding the fact that the alien's wife and child, whom he supports, reside in Syria.¹³

On the other hand, the Board held that the deportation of a native and citizen of Germany who last entered the United States in 1934 by falsely claiming to be a returning resident would not result in "exceptional and extremely unusual hardship" since he is able to finance a trip abroad, should have no difficulty securing a nonquota immigrant visa as the husband of a United States citizen and is only forty-nine years of age. In the same case the Board found that the necessary hardship does not exist in the case of an alien who is entitled to non-quota status or chargeable to an undersubscribed quota, unless he is almost indigent, or is unable to travel, or for some reason would be unable to secure a visa.¹⁴ The Board also held that "exceptional and extremely unusual hardship" has not been established where the applicants have short residence in this country (8 years); their income will not be materially reduced if they return to Greece; there are no close family American citizen ties here; no business enterprise will be disrupted by their departure; and they own a home in Greece as well as in this country.¹⁵

¹⁰ BIA, *In the Matter of S.*, 5, I. & N. Dec. 409, August 13, 1954.

¹¹ BIA, *In the Matter of H.*, 5, I. & N. Dec. 416, August 13, 1953.

¹² BIA, *In the Matter of U.*, 5, I. & N. Dec. 413, August 13, 1953.

¹³ BIA, *In the Matter of Z.*, 5, I. & N. Dec. 419, August 13, 1953.

¹⁴ BIA, *In the Matter of P.*, 5, I. & N. Dec. 421, August 13, 1953.

¹⁵ BIA, *In the Matter of S.*, 5, I. & N. Dec. 695, March 3, 1954.

In the case of a thirty-three year old native and citizen of the British Virgin Islands who last entered the United States in 1944 the Board held that deportation would result in "exceptional and extremely unusual hardship" to her, her legally resident husband and her five United States citizen children. The Board reached this decision in view of the husband's meager earnings, the family's lack of financial assets, the fact that the alien's husband could not support his family in the British Virgin Islands because of employment conditions there, and the fact that her infant children would be without care if she were deported.¹⁶

Denial of suspension of deportation was not arbitrary in the case of a 39-year-old alien who last entered the United States as a stow-away in January 1949 and who has no close family ties in this country, notwithstanding his voluntary disclosure of his unlawful immigration status in response to published statements attributable to Service officials.¹⁷

Suspension of deportation was also denied an alien who entered the United States as a stowaway, who has no dependents here, whose residence has been of short duration (nine years in this case), and who merely meets the minimum requirements for this relief.¹⁸

The courts have held that an alien's lack of family ties and his failure to establish other roots in the United States during a residence of some seventeen years justify the conclusion that there was insufficient showing of hardship to warrant suspension of deportation. Mere economic detriment to the alien or his relatives residing abroad is not controlling on the question whether deportation of the alien should be suspended on the ground of hardship.¹⁹

§ 4. Categories of eligible aliens.

(a) **First category.** The first category of aliens eligible for suspension of deportation consists of aliens who:

(1) are deportable for a ground or grounds other than being within the classes of aliens deportable as subversives, criminals, immoral persons, or physical or mental defectives;

(2) last entered the United States on or before June 26, 1950;

(3) have been physically present in the United States for a continuous period of seven years immediately preceding their application; and

(4) submitted their application for suspension not later than December 24, 1957.

In addition, applicants must prove good moral character for the period referred to under (3) and the exceptional and ex-

¹⁶ BIA, *In the Matter of W.*, 5, I. & N. Dec. 586, December 29, 1953.

¹⁷ BIA, *In the Matter of C.*, 7, I. & N. Dec. 608, November 21, 1957.

¹⁸ BIA, *In the Matter of V.*, 7, I. & N. Dec. 348, November 15, 1956.

¹⁹ *Kam Ng v. Pilliod* (C.C.A. 7, 1960) 279 Fed. (2d) 207.

tremely unusual hardship which would result from deportation. (Section 244(a) (1))

In view of the terminal date of December 24, 1957 for the submission of applications no new cases can be considered within this category.

(b) Second category. The second category of aliens eligible for suspension of deportation consists of aliens who:

(1) are deportable solely for an act committed or status existing before or at the time of entry into the United States and who are not within the classes of subversives, criminals, immoral persons, violators of narcotic laws or illegal entrants;

(2) last entered the United States since June 27, 1950;

(3) have been physically present in the United States for a continuous period of at least five years immediately preceding their application;

(4) at the time of entry had all the requisite documents;²⁰ and

(5) have not been served with a final order of deportation up to the time of their application.

In addition, applicants must prove good moral character for the period referred to under (3) and the exceptional and extremely unusual hardship which would result from deportation. (Section 244(a) (2))

(c) Third category. The third category of aliens eligible for suspension of deportation consists of aliens who:

(1) are deportable for an act committed or status acquired subsequent to entry into the United States but are not within the classes of subversives, criminals, immoral persons, violators of narcotic laws, violators of the Alien Registration Act or undesirable residents and have not remained longer in the United States than the period for which they were admitted;

(2) last entered the United States since June 27, 1950;

(3) have been physically present in the United States for a continuous period of not less than five years immediately

²⁰ An alien who at the time of his entry was in possession of immigration documents to which as a matter of law he was not entitled cannot be said to have been in possession of all the "requisite documents" as required by § 244(a)(2) and is ineligible for suspension of deportation under that section. (BIA, *In the Matter of L.*, 7, I. & N. Dec. 434, March 14, 1957)

following the commission of the act, or the assumption of the status, constituting a ground for deportation;²¹ and

(4) have not been served with a final order of deportation up to the time of their application.

In addition, applicants must prove good moral character for the period referred to under (3) and the exceptional and extremely unusual hardship which would result from deportation. (Section 244(a) (3))

(d) **Fourth category.** The fourth category of aliens eligible for suspension of deportation consists of aliens who:

(1) are deportable because at the time of entry they were excludable by law existing at the time of such entry as subversives, criminals, immoral persons, violators of narcotic laws, or as persons who entered the United States without inspection or without proper documentation, but are not deportable for any of the grounds referred to below under (e);

(2) last entered the United States since June 27, 1950;

(3) have been physically present in the United States for a continuous period of at least ten years after such entry; and

(4) have not been served with a final order of deportation up to the time of their application.

In addition, applicants must prove good moral character for the period referred to under (3) and the exceptional and extremely unusual hardship which would result from deportation. (Section 244(a) (4))

(e) **Fifth category.** The fifth category of aliens eligible for suspension of deportation consists of aliens who:

(1) since their entry into the United States—irrespective of when such entry took place—have committed acts making them deportable as subversives, criminals, immoral persons, violators of narcotic laws, violators of the alien registration laws, undesirable residents or who entered the United States since June 27, 1950, and are deportable as persons who have remained longer in the United States than the period for which they were admitted;

(2) have been physically present in the United States for a continuous period of not less than ten years immediately

²¹ Alien deportable under § 241(a)(2) as one who "remained longer" is within terms of the fifth category of § 244(o) and, hence, is ineligible for suspension of deportation under the third category. (BIA, *In the Matter of P.*, Interim Decision 946, June 5, 1958) See also BIA, *In the Matter of B.*, 7, I. & N. Dec. 400, January 28, 1957.

following the commission of the act, or the assumption of the status constituting ground for deportation;²² and

(3) have not been served with a final order of deportation up to the time of their application.

In addition, applicants must prove good moral character for the period referred to under (2) and the exceptional and extremely unusual hardship which would result from deportation. (Section 244(a) (5))²³

²² Section 244(o)(5) is construed as requiring that before an application for suspension may be submitted, at least ten years must have elapsed after the ground for deportation arose, and that during the ten years immediately preceding the application the alien must prove continuous physical presence in the United States and good moral character. (BIA, *In the Matter of M.*, 5, I. & N. Dec. 261, June 1, 1953)

²³ An alien otherwise eligible for suspension of deportation who is deportable on one of the charges described in § 244(o)(5) is eligible for suspension of deportation even though he is also deportable on some other charge or charges which are not within the provisions of that section and it is immaterial whether such additional grounds for deportation do or do not relate to acts committed or a status acquired subsequent to entry. (BIA, *In the Matter of D.*, 5, I. & N. Dec. 285, June 11, 1953)

An alien who was admitted to the United States in 1920, was convicted in 1926, and lost entered the United States in 1933, is not precluded from applying for suspension of deportation under § 244(a)(5) because of the language therein which refers to an act committed or status acquired subsequent to entry since his conviction in 1926 was subsequent to his original entry in 1920. (BIA, *In the Matter of P.*, 5, I. & N. Dec. 651, January 28, 1954)

An alien subject to deportation for a criminal offense committed in 1952 is not now eligible for suspension of deportation under § 244(o)(5) since he cannot meet the residence or good moral character requirements even though he can establish 17 years continuous physical presence in the United States and good moral character prior to the criminal offense. (BIA, *In the Matter of P.*, 6, I. & N. Dec. 795, November 23, 1955)

An alien deportable under § 241(a)(4) for having committed voluntary manslaughter in 1921 for which he was convicted and sentenced in 1955 is not eligible for suspension of deportation under § 244(a)(5). As the ground of deportation did not come into being until his conviction and sentence in 1955, he can not show ten years physical presence and good moral character immediately following "the commission of an act, or the assumption of a status," constituting the ground of deportation. (BIA, *In the Matter of P.*, 6, I. & N. Dec. 788, November 22, 1955)

An alien who was served with a final order of deportation on April 26, 1954, under the Immigration and Nationality Act at which time he was statutorily ineligible for suspension of deportation under § 244(a)(5) for lack of ten years' physical presence in the United States, is barred from thereafter qualifying for suspension of deportation. A conditional order by the special inquiry officer, in connection with the alien's motion to reopen, withdrawing the outstanding order and warrant of deportation but expressly reserving opinion as to whether the alien is able to qualify for suspension of deportation, does not alter the alien's ineligibility for such relief under these circumstances. (BIA, *In the Matter of C.L.*, 7, I. & N. Dec. 137, February 28, 1956)

The purpose of the requirement in § 244(o)(5) that the alien "has not been served with a final order of deportation issued pursuant to this Act" is to preclude suspension of deportation where the alien was not eligible for relief at the time of the final order. Hence, an alien who was served with a final order of deportation under the Immigration and Nationality Act on November 19, 1954, at which time he was statutorily ineligible for suspension of deportation under § 244(o)(5) because ten years had not elapsed between the time of the cessation of his membership in the Communist Party and the date of his application for suspension, may not be granted such relief on a subsequent application despite a showing that more than ten years have now elapsed since he left the Communist Party. (BIA, *In the Matter of O.*, 7, I. & N. Dec. 457, April 4, 1957)

§ 5. Certain nonquota immigrants ineligible for suspension.—An alien who is a native of any country contiguous to the United States or of any adjacent island²⁴ may not have his status adjusted through suspension of deportation in the first, second or third category, unless he establishes that he is ineligible to obtain a nonquota immigrant visa. (Section 244(b))

§ 6. Decision and appeal.—The decision on an alien's application for suspension of deportation is made by the special inquiry officer. (8 CFR 244.1) If the application is denied it is subject to an appeal to the Board of Immigration Appeals. (8 CFR 242.21(b))²⁵

In determining an application for suspension of deportation the special inquiry officer may consider information not contained in the record only when the Commissioner of Immigration and Naturalization has determined that it is in the interest of national security and safety to do so. (8 CFR 242.17(c))²⁶

Suspension of deportation is an entirely discretionary action which does not follow automatically from compliance with the formal eligibility requirements. It has been described as a matter of grace to cover cases of unusual hardship. The courts stated that "The power of the Attorney General to suspend deportation is a dispensing power, like a judge's power to suspend the execution of a sentence, or the President's to pardon a convict."²⁷ While eligibility for relief under the suspension of deportation procedure is governed by specific statutory standards, Congress did not provide statutory standards for determining who, among qualified applicants for suspension, should receive the ultimate relief. That determination is left to the sound discretion of the Attorney General.²⁸ Judicial review of the

²⁴ Contiguous territory refers to Canada and Mexico. The term "adjacent islands" includes St. Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French and Netherlands territory or possessions in or bordering on the Caribbean Sea. (§ 101(b)(5)) It has been determined administratively that British Honduras is to be considered an "adjacent island."

²⁵ See ch. 46, §§ 5, 6.

²⁶ The predecessor provision of this regulation contained in former 8 CFR 244.3 placed the responsibility for the nondisclosure of confidential information in the hands of the special inquiry officer and the Board of Immigration Appeals. The Supreme Court upheld the validity of this regulation, holding that "Section 244 gives no right to the kind of a hearing on a suspension application which contemplates full disclosure of the considerations entering into a decision," and concluded that this regulation is not inconsistent with the Act. (*Jay v. Boyd* (1956) 351 U. S. 345, 100 L. ed. 1242, 76 Sup. Ct. 919)

²⁷ Judge Learned Hand in *U.S. ex rel. Kaloudis v. Shaughnessy* (C.C.A. 2, 1950) 180 Fed. (2d) 489, 491. See also Senate Report No. 1137, 82nd Congress, Second Session, p. 25; and Senate Report No. 1515, 81st Congress, Second Session, p. 600.

²⁸ *Jay v. Boyd*, *supra*.

Attorney General's discretion to suspend deportation of an alien is limited to the questions whether the alien had been accorded procedural due process and whether the decision had been reached in accordance with applicable rules of law. The inquiry of the Court goes to the question whether there has been exercise of administrative discretion and if so, whether or not the manner of exercise has been arbitrary or capricious.²⁹

§ 7. Report to Congress and final action by Attorney General.—

The Attorney General is required to report to Congress each case in which he suspends deportation. These reports must be submitted to Congress on the first and fifteenth day of each calendar month in which Congress is in session. If during the session of Congress at which a case is reported or during the following session of Congress, in the case of an alien falling within one of the first three categories described above, neither the Senate nor the House of Representatives passes a resolution disapproving suspension of deportation, the Attorney General is authorized to cancel deportation proceedings.

If during the session of Congress at which a case is reported or during the following session, in the case of an alien falling within the fourth and fifth categories described above, Congress passes a concurrent resolution favoring suspension of deportation, the Attorney General is authorized to cancel deportation proceedings.

If either House of Congress takes adverse action in the case of an alien falling within the first, second or third category, and if Congress fails to take favorable action in the case of an alien falling within the fourth or fifth category, the Attorney General must proceed with deportation. (Section 244(b) and (c))

Upon cancellation of deportation, the Attorney General records the alien's lawful admission for permanent residence as of the date the cancellation of deportation is made.³⁰ If the alien, at the time of entry, would have been a quota immigrant, the Secretary of State must reduce by one the quota to which the alien is chargeable. (Section 244(d))

²⁹ *Kam Ng v. Pilliod, supra.*

³⁰ Prior to the Immigration and Nationality Act such admission was recorded as of the date of the alien's last entry into the United States. (§ 19(c) of Immigration Act of 1917, as amended, 62 Stat. 1206)

CHAPTER 48

REMOVAL OF DISTRESSED ALIENS

SECTION.

1. Summary.
2. Application for removal.
3. Examination and decision.

§ 1. **Summary.**—An alien who falls into distress or who needs public aid from causes arising subsequent to his entry is not deportable but may, on his application, be removed at Government expense to the country of his nativity, citizenship, last residence, or to any other country willing to receive him. Once so removed an alien may not apply for a visa or admission to the United States unless he obtains the prior approval of the Attorney General.¹ (Section 250)

§ 2. **Application for removal.**—Application for removal is made on Form I-243 and must be submitted to the Immigration and Naturalization Service office located nearest to the applicant's place of residence. The application of a child under fourteen years of age may be included in the application of a parent.

If the applicant has received aid from a public or charitable institution or association, an accredited representative of such organization must indicate the nature and extent of aid furnished. If the applicant has not received public aid he is required to describe the financial circumstances which cause him to need public aid. (8 CFR 250.1 and Form I-243)

§ 3. **Examination and decision.**—After an examination of the application the district director having jurisdiction over the applicant's place of residence either denies or approves the application for removal. No appeal lies from the decision of the district director. (8 CFR 250.1) If the application for removal is granted the district director authorizes the removal on Form I-202.

Upon issuance of the authorization for removal, or as soon thereafter as practical, the alien may be removed from the United States at Government expense. (8 CFR 250.2)

¹ See also ch. 33, § 14.

PART VIII
MISCELLANY

CHAPTER 49

PRIVATE IMMIGRATION LAWS

SECTION.

1. Summary.
2. Volume of private legislation.
3. Procedure in private bill cases.
 - (a) Introduction of bill.
 - (b) Action after introduction.
 - (c) Rules of House Subcommittee on Immigration.
4. Private bills for the benefit of aliens in the United States.
 - (a) Effect on lawful status of nonimmigrant.
 - (b) Effect on status of deportable alien.
5. Private bills for the benefit of aliens abroad.
6. Private bills as forerunners of public legislation.
7. Arguments for and against private immigration laws.

§ 1. **Summary.**—Private immigration laws are measures passed by both houses of Congress and enacted into law which deal with the immigration status of individually designated persons.¹ The number of private immigration laws enacted during recent years, and particularly the number of private bills in the immigration field introduced during the same period, has so significantly increased that a discussion of the immigration laws of the United States would be incomplete without a reference to private legislation.

Private bills in the field of immigration deal with a variety of situations. Most private immigration bills would grant the right of permanent residence in the United States to aliens who have entered without immigrant visas. Other private immigration bills seek exemption for individual aliens from certain grounds of inadmissibility under the general immigration laws. For example, some of these bills, if enacted, would admit aliens otherwise inadmissible because of illiteracy, disease, mental defect or conviction of a crime involving moral turpitude. Other private bills seek the cancellation of deportation proceedings, or would grant nonquota status to the adopted child of an American citizen. Before the Immigration and Nationality Act re-

¹ " . . . a law or statute that applies to the people generally of the nation or state adopting or enacting it, is denominated a public law, as contradistinguished from a private law, affecting only an individual or a small number of persons." Black's Law Dictionary, Fourth Edition, 1951, p. 1394.

moved racial bars from the immigration laws a considerable number of private bills sought exemption from these bars in cases of individual immigrants.²

In general, Congress takes favorable action on a private bill only if there are unusually compelling circumstances in a case which justify an exception to the general rule of law and if available administrative relief has been exhausted.

§ 2. Volume of private legislation.—The following table lists the number of private immigration and nationality bills introduced in Congress during the twenty-four-year period from 1937 to 1960, inclusive, as well as the number of bills which were enacted into law during the same period. More than 90 per cent of these bills were immigration bills.

Private Immigration and Nationality Bills ³

Year	Congress	Introduced	Enacted
1959-1960	86th Congress	3,069	488
1957-1958	85th Congress	4,364	927
1955-1956	84th Congress	4,474	1,227
1953-1954	83rd Congress	4,797	755
1951-1952	82nd Congress	3,669	729
1949-1950	81st Congress	2,811	505
1947-1948	80th Congress	1,141	121
1945-1946	79th Congress	429	14
1943-1944	78th Congress	163	12
1941-1942	77th Congress	430	22
1939-1940	76th Congress	601	65
1937-1938	75th Congress	293	30

§ 3. Procedure in private bill cases.

(a) **Introduction of bill.** An alien seeking an exception through private legislation from the generally applicable immigration laws asks a member of Congress, either directly or through a relative, friend, or other intermediary, to introduce a bill for his relief. Any member of Congress who considers a case sufficiently meritorious to justify private legislation may introduce a relief bill. It is not necessary, though customary, that the member of Congress introducing the bill represents the

² For an analysis of the types of private bills introduced and passed in the 82nd Congress, immediately preceding the enactment of the Immigration and Nationality Act, see *Hearings before the President's Commission on Immigration and Naturalization*, printed for the use of the House Judiciary Committee, 82nd Congress, Second Session, pp. 1969, 1970.

³ Source: Immigration and Naturalization Service. Frequently, one private law benefits more than one alien. For example, the 488 private laws enacted by the 86th Congress benefited 578 aliens.

district or the state in which the alien or his friend or relative resides.

(b) **Action after introduction.** A private bill is referred to the Judiciary Committee of the House if introduced in the House, and to the Senate Judiciary Committee if introduced in the Senate. The committee to which the bill is referred will then, as a rule, request a report on the case from the Department of Justice and, if the bill's beneficiary resides abroad, from the Department of State.

Once the reports from the administrative agencies have been received the Immigration Subcommittee of House or Senate considers the bill. As a rule, the committee holds a hearing at which the sponsor of the bill, and sometimes the alien himself, are given an opportunity to be heard. The subcommittee then considers the bill in executive session and recommends to the full committee that it be favorably reported or tabled. The committees of both House and Senate have a general policy of disapproving private bills in cases in which an administrative remedy is available. Unless the bill is tabled, it is reported to the House or Senate, wherever it is pending, and referred to the private calendar. If passed by one house, it is referred to the other house for similar action by its subcommittee, committee, and full body. Once a private bill is passed by both houses of Congress it is submitted to the President for his approval. If the President vetoes the bill, the Congress may override the veto as in the case of public bills.⁴

If a private law grants the right of permanent residence in the United States to an alien who has entered without an immigrant visa, as a rule, the deduction of one number from the appropriate quota is stipulated if the alien would have been a quota immigrant at the time of his last entry into the United States.

A private immigration bill on which action has not been completed by the Congress in which it was introduced, as any other bill, "dies" with the end of that Congress. For example, a bill introduced in the 86th Congress on which action was not completed by that Congress, must be introduced in the 87th Congress before action may be taken on it and goes through the various stages of committee and chamber action in the new Congress.⁵

(c) **Rules of House Subcommittee on Immigration.** In the face of a steady increase in the number of private immigration

⁴ For a discussion of the legislative process in Congress see Charles J. Zinn, "How Our Laws Are Made," House Document No. 156, 86th Congress, First Session, 1959.

⁵ See, however (c), *infra*, House Rule 12.

and nationality bills, Subcommittee No. 1 of the House Judiciary Committee which has jurisdiction over legislation of immigration and nationality, in January 1954, adopted rules of procedure designed to stem this tide and to apply uniform standards to private immigration bills. These rules, as amended by the Subcommittee during the 86th Congress, follow:

1. The meeting of the Subcommittee shall be held on Monday of each week at 10 a. m.

2. All meetings of the Subcommittee shall be public except on the order of the Chairman or a majority of the members present.

3. A quorum of the Subcommittee shall consist of two members for the purpose of holding hearings on private bills and three members for the purpose of making recommendations to the Committee.

4. Requests for reports on private bills from the Departments shall be made only upon a written request addressed to the Chairman of the Subcommittee or the Chairman of the Committee on the Judiciary by the author of such bill. That request shall contain the following information which shall be submitted to the Committee in triplicate:

(a) In the case of aliens who are physically in the United States:

The date and place of the alien's entry into the United States; his immigration status at that time (visitor, student, exchange student, seaman, stowaway, illegal border crosser, etc.); his age; place of birth; address in the United States; and the location of the United States Consulate at which he obtained his visa, if any.

(b) In the case of aliens who are residing outside of the United States:

The alien's age; place of birth; address; and the location of the United States Consulate before which his application for a visa is pending; and the address and relationship of the person primarily interested in the alien's admission to the United States.

5. The staff of the Subcommittee shall not receive nor forward to the Subcommittee for action any requests for reports which do not comply fully with the provisions of Rule 4.

6. The Subcommittee shall not address to the Attorney General communications designed to defer deportation of beneficiaries of private bills who have entered the United States as stowaways, or deserting seamen, or by surreptitiously entering without inspection through the land or sea borders of the United States.

Exemption from this rule may be granted by the Subcommittee in cases where the bill is designed to prevent extreme hardship. However, no such exemption may be granted unless the author of the bill has secured and filed with the Subcommittee full and complete documentary evidence in support of his request to waive this rule.

7. No private bill shall be considered if an administrative remedy exists, or where court proceedings are pending for the purpose of altering the immigrant status of the beneficiary.

8. No favorable consideration shall be given to any private bill until a report from the proper Department has been secured.

9. Upon the receipt of reports from the Departments, private bills shall be scheduled for Subcommittee consideration in the chronological order of their introduction, except that priority shall be given to bills introduced earliest in any of the previous Congresses.

10. Consideration of private bills designed to adjust the status of aliens who are in the United States shall not be deferred due to non-appearance at Subcommittee hearings of the author of the bill or persons authorized to represent him.

11. Bills tabled by the Committee shall not be reconsidered unless new evidence is introduced showing a material change of the facts previously known to the Committee.

12. Bills which have passed the House of Representatives during a previous Congress will be ordered favorably reported to the full Committee unless they have been acted upon adversely by the Committee on the Judiciary of the Senate.

Bills which have passed the House of Representatives and have been adversely acted upon by the Committee on the Judiciary of the Senate will not be considered unless a companion bill passed by the Senate is referred to the Subcommittee.⁶

§ 4. Private bills for the benefit of aliens in the United States.

(a) **Effect on lawful status of nonimmigrant.** The introduction in Congress of a private bill to obtain for a nonimmigrant alien the status of an immigrant lawfully admitted for permanent residence is *prima facie* evidence of an intention by the alien to abandon residence in a foreign country and, therefore, to violate nonimmigrant status. Before deportation proceedings are commenced, however, as a matter of policy, such an alien is given an opportunity to take steps to withdraw the private bill or, if he chooses not to withdraw it, to leave the United States voluntarily.⁷

(b) **Effect on status of deportable alien.** The policy of the Department of Justice with regard to the effect of private bills on pending deportation cases has been stated publicly by the then Attorney General James P. McGranery in a letter, dated August 21, 1952, to Francis E. Walter, chairman of the House Subcommittee on Immigration and Nationality. In this letter the Attorney General stated in part:

"In the past this Department has generally withheld the deportation of those aliens in whose behalf private bills were pending, when such postponement has been requested by the Senate and House Judiciary Committees. Such deferments represent an administrative courtesy which the Attorney General is glad to extend to Congress. As you know, however, the law reposes in this office the duty to deport aliens who are illegally in the United States, and this Department must reserve the right to determine whether a stay of deportation in any individual case is consistent, in its judgment, with good administration and with the welfare and safety of the United States, a policy with which I am sure that you are in full accord. Such determination, however, will be made only after consultation with the interested committees of Congress."⁸

⁶ *Rules of Procedure, Private Legislation, Subcommittee No. 1, Committee on the Judiciary, House of Representatives, 86th Congress.*

⁷ Attorney General, *In the Matter of A.*, 6, I. & N. Dec. 651, March 27, 1956.

⁸ *Hearings Before the President's Commission on Immigration and Naturalization, Committee on the Judiciary, House of Representatives, 82nd Congress, Second Session, 1952, p. 1971.*

While the beneficiary of a private bill will not be deported during its pendency, the Immigration and Naturalization Service will complete all administrative procedures and will promptly enforce departure on those aliens whose bills have met adverse action by Congress.⁹

As a rule, the Immigration and Naturalization Service will defer deportation of an alien in whose case a private bill has been introduced in the House only if the House Judiciary Committee addresses some formal communication to the Service after the introduction of the bill, such as a request for a report.¹⁰ The Senate Judiciary Committee has an understanding with the Immigration and Naturalization Service that deportation will be stayed in the case of any alien concerning whom a Senate bill is pending if no unfavorable action has been taken by the Senate or the Senate Committee.¹¹ If congressional action on a private bill remained incomplete at the end of a Congress or at the end of the first session of a Congress, without adverse action having been taken by the committee or the full body of either house, the Immigration and Naturalization Service usually defers deportation until there has been an opportunity during the following session of Congress to take formal action on the bill.

§ 5. Private bills for the benefit of aliens abroad.—Private bills introduced for the benefit of aliens residing abroad seek relief from the alien's disqualification for a visa under existing law. A bill may seek dispensation from one of the qualitative grounds requiring the denial of a visa, such as existing mental or physical conditions; or from the quota restrictions of the law. Bills in the latter category have accorded "for the purposes of the immigration laws" the status of a child to an alien who does not meet all the statutory requirements of this term, or the status of an "eligible orphan" as defined in the general immigration laws although in the particular case the applicant may have exceeded the statutory age limit.

Upon the passage of such a bill the consular officer proceeds with the visa application in consideration of the relief granted

⁹ Annual Report of the Immigration and Naturalization Service, 1955, p. 26, and 1956, p. 24.

¹⁰ Senate Report No. 1515, 81st Congress, Second Session, p. 609. House Committee rules do not permit a request for deferment of deportation of beneficiaries of private bills who have entered the United States as stowaways, or as deserting seamen, or by surreptitiously entering without inspection through the land or sea borders of the United States. (See § 3(c), *supra*, Rule 6)

¹¹ Senate Report No. 1515, *supra*, p. 608. For earlier history of the agreements between the congressional committees and the Immigration and Naturalization Service, see First Edition, p. 283.

from the otherwise existing bar under the general immigration laws. Relief in such a case, however, is accorded only for the ground of ineligibility specified in the private act. For example, if a private law permits the issuance of an immigrant visa to an alien who would otherwise be ineligible because he suffers from epilepsy, a visa cannot be issued if, at the time of the alien's formal visa application, it is determined that he is ineligible to receive a visa for some other ground, such as conviction of a crime involving moral turpitude. For this reason the congressional committees, before acting on a private bill, obtain a report from the consular officer before whom the visa application is pending concerning the grounds which have led to the denial of the visa. The consular officer who receives a request for such a report will seek to determine all the grounds which may call for a denial of a visa so that the Congress may be guided by his report in deciding whether relief should be granted from the existing grounds of ineligibility.

§ 6. Private bills as forerunners of public legislation.—Before the enactment of the Immigration and Nationality Act, as well as since its enactment in 1952, private bills have frequently been the forerunners of significant amendments to existing general immigration laws. Before the Immigration and Nationality Act accorded nonquota status to spouses of American citizens irrespective of their ancestry, Asian spouses of American citizens were subject to quota restrictions. The stationing of American servicemen in the Far East and the resulting marriages between American citizens and alien spouses of Asian ancestry led to the introduction and passage of a considerable number of private bills according the individual Asian spouse nonquota status. The increasing volume of this type of private bills led eventually to public legislation giving nonquota status to the spouses of American servicemen irrespective of their ancestry¹² and later led to the provision in the Immigration and Nationality Act which placed alien spouses of all American citizens on equal footing irrespective of race.¹³ Similarly, the provision of the Act of September 3, 1954 exempting petty offenders from the excluding provisions of the general law was preceded by a series of private bills seeking relief in cases of individual aliens, mostly alien wives of American servicemen who, during the post-war period, had been convicted for minor offenses.¹⁴

General legislation of recent years was preceded by an increasing volume of private acts which pointed out the desirability

¹² Act of July 22, 1947 (61 Stat. 401).

¹³ See ch. 10, § 3.

¹⁴ See ch. 33, § 5(i).

of amendments to the existing general laws. The following statement of the House Judiciary Committee recommending the passage of legislation which vested the Attorney General with discretionary authority to admit aliens who had been convicted of crimes involving moral turpitude or who had a past record of prostitution and who are close relatives of American citizens or permanent resident aliens, serves as an illustration:

"The Committees on the Judiciary of the House and the Senate have a considerable number of private bills before them under which the conduct of such aliens, considering their family situation, would be condoned. A great number of such private bills passed the Congress and were enacted into law during the last few years. It appears to the committee that it is unfair and improper to extend the benefit of legislative relief solely to a few selected individuals who are in a position to reach the Congress for redress of their grievances. It is felt that that humanitarian approach should be extended to an entire defined class of aliens rather than to selected individuals."¹⁵

§ 7. Arguments for and against private immigration laws.—The volume of private bills has long been a concern of the Congress. This concern led to the enactment of Section 131 of the Legislative Reorganization Act of 1946¹⁶ which banned the introduction of private bills seeking the payment of money for property damages or pensions, the construction of bridges and the correction of military or naval records.

Senator Robert M. LaFollette, Jr., testifying in 1948 before the Committee on Expenditures in the Executive Departments, made the following statement:

"Various private bills still allowed are relatively unimportant individually, but in their large numbers can, and do put, an onerous load on the present Judiciary Committee in both houses. Unquestionably, further steps should be taken to relieve the Judiciary Committee of this burden. . . ."¹⁷

On the other hand, Representative Emanuel Celler, testifying before the same committee in June 1951, said in part:

"It has been suggested that private bills, whether they be immigration, claims, patents, those dealing with lands, be taken out of the legislative process completely and turned over to administrative agencies. Although there is some merit in that idea, I do not fully approve such a change. It must be kept in mind that Congress, in these instances, is the last resort to which the individual can turn for redress of a grievance. In other words, he has exhausted all administrative relief and has turned to Congress for equity. It is this equity character that will suffer through administrative handling. An administrative body is

¹⁵ House Report No. 1199, 85th Congress, First Session, p. 11.

¹⁶ 60 Stat. 813, 831.

¹⁷ Hearings before the Committee on Expenditures in the Executive Departments, United States Senate, 80th Congress, Second Session, On Evaluation of Legislative Reorganization Act of 1946, p. 63, 1948.

necessarily hemmed in by the rules and regulations and is expected to handle the regular rather than the exceptional case. An administrative body will generally err on the side of caution since the use of discretion may be subject to criticism. Thus, the very essence of equity may be lost . . . Should this whole process be changed into one of administrative relief, as has been suggested, I believe that you will find that the individuals unfavorably received by the administrative agencies, justly or unjustly, will still, nonetheless, come to their Congressmen with their complaint and request relief from the ruling of the administrative agency. The individual member of Congress would again find himself importuned to interpose in administrative rulings."¹⁸

A similar stand was taken in 1951 by Senator Willis Smith of North Carolina at the Joint Hearings of the Subcommittees of the Committees on the Judiciary on the omnibus immigration and nationality bills. When a witness urged that the Congress find some means to unburden itself of the load of private bills by appointing a board which would have authority to act in exceptional immigration cases Senator Smith said:

"Do you not know that every time an application was not acted on in accordance with somebody's view then that person would go to Congress to try to get a private bill passed? . . . I have taken the position that I am not going to interfere with the Power Commission or any other commission that does a job, but a lot of people feel it is their duty as Congressmen to ferret it down and do something special for somebody."¹⁹

More recently, as described in Section 6 above, the Congress has enacted several public laws designed to obviate the need for private legislation. When the House, in 1958, considered an amendment to Section 245 designed to facilitate the adjustment of status of aliens in the United States, Representative Walter stated that:

"The Committee on the Judiciary, heavily burdened with private bills, has for a long time felt the necessity for the enactment of the legislation which we are bringing up today."²⁰

The following exchange between Representative Walter and Representative H. R. Gross, during the deliberation of the same legislation, illustrates the arguments for and against private bills in the immigration field:

¹⁸ Hearings before the Committee on Expenditures in the Executive Departments, United States Senate, 82nd Congress, First Session, On Evaluation of the Effects of Laws Enacted to Reorganize the Legislative Branch of the Government, 1951, pp. 248, 249.

¹⁹ Joint Hearings before the Subcommittees of the Committees of the Judiciary, 82nd Congress, First Session, on S. 716, H. R. 2379 and H. R. 2816, p. 645.

²⁰ Congressional Record of July 30, 1958, p. 14298. Earlier, the President expressed his concern over the "unnecessary burden upon the Congress and the President" by the "large and ever-increasing mass of immigration bills for the relief of aliens." As a remedy he recommended the broadening of administrative discretion for granting relief from exclusion and expulsion. (Message relative to Immigration Matters of January 31, 1957, House Document No. 85, 85th Congress, First Session, p. 4)

MR. GROSS. "Will this (amendment of Section 245) have the effect of reducing the number of cases on the Private Calendar?"

MR. WALTER. "That is one hope, I might say to my friend from Iowa."

MR. GROSS. "I hope that someday somehow that can be brought about, and I thought it might be helped by the passage of the McCarran-Walter Act."

MR. WALTER. "I might add in reply to my distinguished friend who makes a great contribution to these proceedings, that private legislation in the field of immigration is a very difficult problem. On the one hand, for example, under the immigration laws we exclude prostitutes. However, American soldiers go abroad, marry certain girls and want to bring them here. Now, what do you do? Do you eliminate from the general statute prostitution as a ground of exclusion or do you enact private legislation in a deserving case? I do not know the answer, frankly; and so long as human nature and the variety of conditions affecting human lives is what it is, of course we are going to have to look into individual cases and weigh the equities in considering private bills."

MR. GROSS. "I do not know that anyone knows the answer to that."

MR. WALTER. "It is a difficult problem, I will confess."²¹

Thus it appears that Congress and its committees will continue to provide relief, through private legislation, in unusual and meritorious immigration cases.²²

²¹ Congressional Record, *supra*, p. 14299.

²² For a discussion of private laws in general, and private immigration laws in particular, see also Galloway, *Legislative Process in Congress*, 1955, pp. 529 through 535.

CHAPTER 50

STATISTICS ON THE IMMIGRATION, EXCLUSION AND DEPORTATION OF ALIENS

SECTION.

1. Immigration to the United States.
2. Aliens in the United States.
3. Nonimmigrants admitted.
4. Aliens excluded.
5. Aliens deported, and aliens departed voluntarily under deportation proceedings.

§ 1. Immigration to the United States.—The volume of immigration to the United States has traditionally been a barometer of political and economic instability abroad. Since the adoption of numerical restrictions on immigration in 1921, the flow of immigrants has been regulated internally by quota limitations imposed on immigrants from various countries.¹ These restrictions, however, have been tempered by the lack of numerical limitations on the immigration of certain groups of immigrants under the regular immigration laws, most significantly of children, wives and husbands of American citizens, and of natives of independent countries of the Western Hemisphere; and by the passage of special legislation authorizing the admission as nonquota immigrants of significant numbers of war refugees and refugees from political persecution, upheaval and natural disaster.² In addition to legal restrictions on immigration, the economic conditions in the United States are also an important factor in the fluctuation of the volume of immigration.

Helen F. Eckerson has summarized the factors which have influenced immigration since 1929, the year in which the national origins quota system went into effect:

“ . . . Almost immediately came the economic depression that brought immigration to its lowest point in a century. As we began to climb out of the depression, immigration, too, began to rise. Among those who came was a fair proportion who correctly understood Hitler's hatred and fled before it. Hence, in the 1930 decade our highest immigration was from Germany. Then came the war, and immigration again all but ceased until 1946, when the greatest influx of war brides began, followed closely by the displaced persons, as well as the accumulation of other immigrants who, but for the war, might have come annually over the war period.

¹ See chs. 1, 8.

² See ch. 2, § 3, and chs. 7, 51 and 52.

"When the Displaced Persons Act expired, immigration turned down again briefly. The D.P. Act had cut quotas in half,³ and there was a recession—both reasons for lowered immigration. However, refugees admitted under the Refugee Relief Act soon followed the displaced persons, and while we no longer called them war brides, alien wives of United States citizens—Germans, Japanese, Koreans and others from countries where our young citizens are stationed—continued to swell the ranks of immigrants. During this period, also, immigration from the Western Hemisphere, particularly Canada and Mexico, was rising.

"When most of the provisions of the Refugee Relief Act expired in 1958, and, at the same time immigration from Mexico dropped, immigration coasted down again, to be followed by a slight upturn in 1959.

"In the past two years there have been some refugees, particularly the Hungarians, and other groups including many relatives of citizens and resident aliens admitted under special provisions of law. Also, more quota numbers have been available with the freeing of numbers mortgaged by the Displaced Persons Act."⁴

Table A lists the number of immigrants admitted annually to the United States from 1820 through 1959.⁵

During the last decade Germany, Mexico, Canada, Great Britain, Italy and Poland have, in this order, contributed most to the total number of immigrants. Of the 2,499,268 immigrants admitted between 1950 and 1959, 344,907 were born in Germany; 293,469 in Mexico; 261,979 in Canada; 197,666 in Great Britain; 182,900 in Italy; and 172,887 in Poland.

Table B lists immigrants admitted, by country or region of birth, from 1950 through 1959.

³ See ch. 1, § 13(g).

⁴ Eckerson, "Aliens Who Adopted The United States," *I. & N. Reporter*, April 1960, p. 43. See ch. 8, § 4.

⁵ Tables and other statistical data published in this chapter were prepared by, or are based on material of, the Immigration and Naturalization Service.

Table A
IMMIGRATION TO THE UNITED STATES
1820-1959

[From 1820 to 1867 figures represent alien passengers arrived; 1868 through 1891 and 1895 through 1897 immigrant aliens arrived; 1892 through 1894 and from 1898 to the present time immigrant aliens admitted.]

Year	Number of persons	Year	Number of persons	Year	Number of persons	Year	Number of persons
1820-1959 ⁶	<u>41,575,563</u>	1852	371,603	1888	546,889	1922	309,556
		1853	368,645	1889	444,427	1923	522,919
1820	8,385	1854	427,833	1890	455,302	1924	706,896
		1855	200,877			1925	294,314
1821-1830	<u>143,439</u>	1856	200,436	1891-1900	<u>3,687,564</u>	1926	304,488
1821	9,127	1857	251,306	1891	560,319	1927	335,175
1822	6,911	1858	123,126	1892	579,663	1928	307,255
1823	6,354	1859	121,282	1893	439,730	1929	279,678
1824	7,912	1860	153,640	1894	285,631	1930	241,700
1825	10,199			1895	258,536		
1826	10,837	1861-1870	<u>2,314,824</u>	1896	343,267	1931-1940	<u>528,431</u>
1827	18,875	1861	91,918	1897	230,832	1931	97,139
1828	27,382	1862	91,985	1898	229,299	1932	35,576
1829	22,520	1863	176,282	1899	311,715	1933	23,068
1830	23,322	1864	193,418	1900	448,572	1934	29,470
		1865	248,120			1935	34,956
1831-1840	<u>599,125</u>	1866	318,568	1901-1910	<u>8,795,386</u>	1936	36,329
1831	22,633	1867	315,722	1901	487,918	1937	50,244
1832	60,482	1868	138,840	1902	648,743	1938	67,895
1833	58,640	1869	352,768	1903	857,046	1939	82,998
1834	65,365	1870	387,203	1904	812,870	1940	70,756
1835	45,374			1905	1,026,499		
1836	76,242	1871-1880	<u>2,812,191</u>	1906	1,100,735	1941-1950	<u>1,035,039</u>
1837	79,340	1871	321,350	1907	1,285,349	1941	51,776
1838	38,914	1872	404,806	1908	782,870	1942	28,781
1839	68,069	1873	459,803	1909	751,786	1943	23,725
1840	84,066	1874	313,339	1910	1,041,570	1944	28,551
		1875	227,498			1945	38,119
1841-1850	<u>1,713,251</u>	1876	169,986	1911-1920	<u>5,735,811</u>	1946	108,721
1841	80,289	1877	141,857	1911	878,587	1947	147,292
1842	104,565	1878	138,469	1912	838,172	1948	170,570
1843	52,496	1879	177,826	1913	1,197,892	1949	188,317
1844	78,615	1880	457,257	1914	1,218,480	1950	249,187
1845	114,371			1915	326,700		
1846	154,416	1881-1890	<u>5,246,613</u>	1916	298,826	1951	205,717
1847	234,968	1881	669,431	1917	295,403	1952	265,520
1848	226,527	1882	788,992	1918	110,618	1953	170,434
1849	297,024	1883	603,322	1919	141,132	1954	208,177
1850	369,980	1884	518,592	1920	430,001	1955	237,790
		1885	395,346			1956	321,625
1851-1860	<u>2,598,214</u>	1886	334,203	1921-1930	<u>4,107,209</u>	1957	326,867
1851	379,466	1887	490,109	1921	805,228	1958	253,265
						1959	260,686

⁶ Data are for fiscal years ended June 30, except 1820 through 1831 and 1844 through 1849 fiscal years ended Sept. 30; 1833 through 1842 and 1851 through 1867 years ended Dec. 31; 1832 covers 15 months ended Dec. 31; 1843 nine months ended Sept. 30; 1850 fifteen months ended Dec. 31; and 1868 six months ended June 30.

Table B
IMMIGRANTS ADMITTED, BY COUNTRY OR REGION OF BIRTH
YEARS ENDED JUNE 30, 1950—1959

Country or region of birth	Total 1950-1959	1950	1951	1952
All countries	2,499,268	249,187	205,717	265,520
Europe	1,562,508	206,547	161,177	202,884
Austria	30,892	3,182	2,777	5,976
Belgium	12,960	1,108	1,238	1,539
Czechoslovakia	31,945	5,528	3,863	5,041
Denmark	13,445	1,234	1,217	1,345
Finland	6,569	645	646	585
France	37,289	3,519	3,337	3,454
Germany	344,907	31,225	26,369	50,283
Greece	45,883	1,242	4,447	7,084
Hungary	62,387	5,098	4,922	6,850
Ireland	63,259	6,501	3,739	3,796
Italy	182,900	9,839	7,348	9,306
Latvia	36,276	17,494	10,588	4,459
Lithuania	23,249	11,870	4,028	3,044
Netherlands	45,270	3,148	3,170	3,143
Norway	24,515	2,379	2,378	2,481
Poland	172,887	52,851	37,484	33,211
Portugal	14,541	1,075	1,048	1,013
Rumania	20,038	3,599	2,351	4,915
Spain	9,453	463	510	536
Sweden	18,407	1,892	1,427	1,478
Switzerland	17,025	1,728	1,408	1,569
Turkey	3,895	206	231	192
United Kingdom	197,666	13,437	12,491	17,631
U. S. S. R.	53,842	10,971	11,953	12,697
Yugoslavia	65,076	9,154	8,254	17,223
Other Europe	27,934	7,159	3,953	4,033
Asia	135,939	4,615	5,166	9,428
China ⁷	29,795	1,494	1,821	1,421
Hong Kong ⁸	2,639	.....	.....	54
India	2,905	153	134	153
Iran	2,730	245	237	223
Israel	7,854	110	261	206
Japan	39,279	76	198	4,517
Jordan ⁹	4,555	226	284	288
Korea	5,528	10	32	127
Philippines	15,736	595	760	1,066
Other Asia	24,918	1,706	1,439	1,373
North America	718,076	34,004	35,482	48,092
Canada	261,979	18,043	20,809	28,141
Mexico	293,469	6,841	6,372	9,600
Cuba	72,226	2,179	1,893	2,536
Other West Indies	42,574	3,914	3,660	4,187
Central America	40,132	2,151	1,970	2,642
Other North America	7,696	876	778	986
South America	61,895	2,777	2,724	3,902
Argentina	11,830	364	423	506
Brazil	7,884	412	359	465
Colombia	15,184	592	750	1,140
Ecuador	8,241	278	363	691
Peru	5,725	250	211	349
Venezuela	3,643	289	173	195
Other South America	9,388	592	445	556
Africa	13,209	689	700	740
Australia & New Zealand	5,943	443	390	416
Other countries	1,698	112	78	58

⁷ Includes Formosa.

⁸ Not reported separately prior to 1952.

⁹ Jordan includes Palestine.

Table B (continued)
IMMIGRANTS ADMITTED, BY COUNTRY OR REGION OF BIRTH
YEARS ENDED JUNE 30, 1950—1959

Country or region of birth	1953	1954	1955	1956
All countries	170,434	208,177	237,790	321,625
Europe	96,177	111,227	127,492	175,555
Austria	1,862	2,072	2,228	4,326
Belgium	1,335	1,424	1,117	1,370
Czechoslovakia	2,173	2,235	1,983	2,612
Denmark	1,278	1,322	1,321	1,413
Finland	614	681	619	677
France	3,216	3,277	3,411	4,308
Germany	27,305	32,935	29,603	38,390
Greece	1,603	2,127	6,311	10,531
Hungary	803	1,163	904	2,261
Ireland	4,655	5,232	5,975	6,483
Italy	9,701	15,201	31,925	39,789
Latvia	294	296	425	856
Lithuania	314	401	384	908
Netherlands	3,042	3,769	3,732	5,134
Norway	2,427	2,420	2,478	2,548
Poland	4,395	5,663	4,697	8,453
Portugal	1,141	1,636	1,366	1,396
Rumania	468	666	988	2,328
Spain	991	964	1,134	964
Sweden	1,750	1,811	1,546	1,906
Switzerland	1,794	1,636	1,670	1,848
Turkey	147	311	243	556
United Kingdom	19,230	19,309	17,849	21,582
U. S. S. R.	1,780	1,985	1,694	3,864
Yugoslavia	1,272	1,432	2,567	8,723
Other Europe	2,587	1,209	1,322	2,329
Asia	8,029	11,751	12,131	17,538
China*	1,536	2,770	2,705	4,450
Hong Kong**	98	177	160	418
India	155	308	332	314
Iran	160	249	219	227
Israel	421	515	471	857
Japan	2,393	3,777	3,984	5,586
Jordan***	304	346	411	814
Korea	115	254	315	703
Philippines	1,160	1,633	1,784	1,873
Other Asia	1,687	1,722	1,750	2,296
North America	60,107	77,772	90,732	119,417
Canada	28,967	27,055	23,091	29,533
Mexico	18,454	37,456	50,772	65,047
Cuba	3,509	5,527	9,294	14,953
Other West Indies	5,366	3,472	3,205	4,069
Central America	3,056	3,488	3,683	4,981
Other North America	755	774	687	834
South America	4,691	5,523	5,599	6,846
Argentina	691	932	961	1,282
Brazil	501	590	773	970
Colombia	1,322	1,202	1,226	1,576
Ecuador	945	1,061	839	739
Peru	379	515	622	780
Venezuela	220	300	347	458
Other South America	633	923	831	1,041
Africa	922	1,187	1,186	1,441
Australia & New Zealand	450	605	474	602
Other countries	58	112	176	226

* See footnote 7, *supra*.

** See footnote 8, *supra*.

*** See footnote 9, *supra*.

Table B (continued)
 IMMIGRANTS ADMITTED, BY COUNTRY OR REGION OF BIRTH
 YEARS ENDED JUNE 30, 1950—1959

Country or region of birth	1957	1958	1959
All countries	326,867	253,265	260,686
Europe	185,115	138,311	158,023
Austria	4,109	2,005	2,355
Belgium	1,520	1,164	1,145
Czechoslovakia	3,541	2,156	2,813
Denmark	1,373	1,492	1,450
Finland	675	738	689
France	4,180	4,100	4,487
Germany	45,230	32,145	31,422
Greece	4,952	3,079	4,507
Hungary	8,705	1,583	30,098
Ireland	9,124	10,383	7,371
Italy	19,061	24,479	16,251
Latvia	1,077	319	468
Lithuania	1,266	448	586
Netherlands	12,416	3,711	4,005
Norway	2,533	2,385	2,484
Poland	11,225	6,607	8,301
Portugal	1,537	1,635	2,694
Rumania	2,573	805	1,345
Spain	1,009	1,354	1,528
Sweden	2,294	2,224	2,079
Switzerland	1,800	1,739	1,783
Turkey	588	730	691
United Kingdom	27,570	27,613	20,954
U. S. S. R.	4,528	1,899	2,471
Yugoslavia	9,842	2,260	4,349
Other Europe	2,387	1,258	1,697
Asia	23,102	19,867	24,312
China*	5,425	3,213	5,722
Hong Kong**	546	342	844
India	337	513	506
Iran	328	433	409
Israel	1,275	1,681	2,057
Japan	6,354	6,543	5,851
Jordan***	994	528	607
Korea	648	1,604	1,720
Philippines	1,996	2,236	2,633
Other Asia	5,199	2,774	3,963
North America	106,942	80,788	64,740
Canada	33,203	30,055	23,082
Mexico	49,154	26,712	23,061
Cuba	13,733	11,581	7,021
Other West Indies	4,323	5,181	5,197
Central America	5,780	6,573	5,808
Other North America	749	686	571
South America	9,002	11,039	9,792
Argentina	2,058	2,665	1,948
Brazil	1,274	1,360	1,180
Colombia	1,961	2,891	2,524
Ecuador	1,002	1,193	1,130
Peru	824	888	907
Venezuela	411	572	678
Other South America	1,472	1,470	1,425
Africa	1,673	2,040	2,631
Australia & New Zealand	756	937	870
Other countries	277	283	318

* See footnote 7, *supra*.

** See footnote 8, *supra*.

*** See footnote 9, *supra*.

One of the most significant developments in recent years has been the preponderance of the volume of nonquota immigrants over the number of quota immigrants. From 1955 through 1959 931,703 nonquota immigrants were admitted, as against 468,530 quota immigrants. The former group consisted not only of aliens classified as nonquota immigrants under the Immigration and Nationality Act, but also of those who were accorded non-quota status by special legislation.¹⁰

§ 2. **Aliens in the United States.**—The proportion of aliens and foreign born to the total population of the United States has been on the decrease for some time. The 1950 census reports 10,347,395 foreign born persons in the United States or 6.9 per cent of the total population, compared with 14,204,149 or 11.6 per cent in 1930, and 13,515,886 or 14.7 per cent in 1910. Of the 10,347,395 foreign born reported in 1950, 7,562,970 were naturalized citizens and 2,052,640 were aliens, while 731,785 did not report their citizenship status. This trend is due in part to the relatively high mortality rate of the foreign born population as compared with the native born, and to the decrease of immigration during the depression of the 1930's and during World War II.

During 1960, 2,948,973 aliens subject to the address report requirements¹¹ submitted reports to the Immigration and Naturalization Service. Of these, the largest group, 567,484, resided in California; followed by 553,703 in New York; 237,514 in Texas; 199,405 in Illinois; 151,437 in New Jersey; 141,719 in Michigan; 127,710 in Massachusetts; and 126,073 in Pennsylvania.¹²

The number of aliens in the United States is also affected by the volume of aliens naturalized. Between 1950 and 1959 a total of 1,136,850 immigrants were naturalized. During the same period a total of 2,499,268 aliens were admitted as immigrants.

§ 3. **Nonimmigrants admitted.**—The flow of nonimmigrants to the United States has risen markedly between 1950 and 1959. The annual volume of nonimmigrants grew steadily from 385,934 in 1950 to 939,030 in 1959, not counting crewmen and agricultural laborers. In addition, large numbers of border crossers are admitted annually from contiguous territory. Border crossers make repeated entries from Canada and Mexico into the United

¹⁰ See chs. 7, 51, 52; see also Eckerson, "Major Immigration Groups," *I & N Reporter*, January 1959, p. 31.

¹¹ See ch. 43.

¹² *I & N Reporter*, April 1960, p. 56.

States every year and are examined and counted on each occasion. During 1959, more than 28 million border crossings from Canada and more than 55 million from Mexico were reported by the Immigration and Naturalization Service.¹³ The following number of entries by nonimmigrants, other than border crossers, were counted during 1959, some of these, particularly crewmen and visitors, having been repeaters:

Crewmen	1,692,893	Temporary workers (other	
Visitors for pleasure	597,982	than agricultural laborers)	12,746
Agricultural laborers	464,128	International organization	
Transit aliens	116,814	aliens	7,607
Visitors for business	91,434	Treaty traders and	
Students	35,583	investors	3,036
Foreign government officials	30,701	Representatives of foreign	
Exchange visitors	24,293	information media	1,198
		Other classes	1,043

§ 4. **Aliens excluded.**—The number of aliens excluded from the United States when applying for admission at a port of entry,¹⁴ compared with the total number of aliens admitted each year, is relatively small. It reached an all-time low in 1959 when 480 aliens were excluded, compared with the all-time high mark of 4,905 in 1948. These numbers include exclusions of immigrants and nonimmigrants at seaports as well as land borders. They do not include alien crewmen found ineligible for shore leave and other aliens who withdrew their applications for admission after their admissibility was questioned by immigration officers.¹⁵

Table C lists the number of aliens excluded in formal proceedings from 1892 to 1959 and the cause for which they were excluded. It will be noted that during the last twenty years by far the largest group of aliens was excluded for lack of proper documentation, i.e., visas or passports, or because they attempted to enter without inspection.

¹³ Annual Report of the Immigration and Naturalization Service, 1959, p. 14.

¹⁴ See ch. 37.

¹⁵ In 1959, 16,821 crewmen were found ineligible for shore leave and 128,742 other aliens withdrew their applications for admission. (Annual Report of the Immigration and Naturalization Service, 1959, p. 3)

Table C
ALIENS FORMALLY EXCLUDED FROM THE UNITED STATES, BY CAUSE
YEARS ENDED JUNE 30, 1892-1959 ¹⁶

Period	Total	Subversive or anarchistic	Criminals	Immoral classes	Mental or physical defectives	Likely to become public charges	Stowaways	Attempted entry without inspec- tion or documents	Contract laborers	Unable to read (over 16 years of age)	Other
1892-1959	616,796	1,173	12,296	8,164	82,398	219,339	16,011	178,747	41,941	13,677	43,050
1892-1900	22,515	—	65	89	1,309	15,070	—	—	5,792	—	190
1901-1910	108,211	10	1,681	1,277	24,425	63,311	—	—	12,991	—	4,516
1911-1920	178,109	27	4,353	4,824	42,129	90,045	1,904	—	15,417	5,083	14,327
1921-1930	189,307	9	2,082	1,281	11,044	37,175	8,447	94,084	6,274	8,202	20,709
1931-1940	68,217	5	1,261	253	1,530	12,519	2,126	47,858	1,235	258	1,172
1941-1950	30,263	60	1,134	80	1,021	1,072	3,182	22,441	219	108	946
1941	2,929	—	92	13	73	328	227	2,076	40	8	72
1942	1,833	—	70	10	51	161	252	1,207	26	9	47
1943	1,495	1	68	6	63	96	77	1,106	26	8	44
1944	1,642	—	63	8	92	107	155	1,109	28	21	59
1945	2,341	—	87	4	111	56	161	1,805	18	23	76
1946	2,942	2	87	3	65	33	361	2,294	13	4	80
1947	4,771	—	139	3	124	70	902	3,316	19	11	187
1948	4,905	1	142	5	205	67	709	3,690	11	2	73
1949	3,834	25	187	12	112	99	216	2,970	26	9	178
1950	3,571	31	199	16	125	55	122	2,868	12	13	130
1951	3,784	29	337	15	337	78	121	2,783	1	3	80
1952	2,944	9	285	10	67	11	74	2,378	5	3	102
1953	3,637	48	266	27	130	15	47	2,937	3	—	164
1954	3,313	111	296	65	127	16	2	2,432	—	3	261
1955	2,667	89	206	124	113	9	15	1,832	—	4	275
1956	1,709	117	169	64	87	14	10	1,079	—	5	164
1957	1,907	302	91	30	40	2	14	348	3	7	70
1958	733	255	51	18	21	1	35	299	1	1	51
1959	480	102	19	7	18	1	34	276	—	—	23

¹⁶ Table lists formal exclusions at seaports and land borders, except for the years 1945 through 1953 when exclusions at land borders were counted only if aliens applied for admission for thirty days or longer.

§ 5. Aliens deported, and aliens departed voluntarily under deportation proceedings.—A total of 485,747 aliens were deported from the United States during the period from 1892 to 1959. The number of deportations has been fluctuating since the end of World War I from a low of 3,661 in 1923 to a high of 26,951 in 1954. In evaluating these data it must be borne in mind that many aliens found deportable are permitted to depart voluntarily. Between 1927, when voluntary departures were first recorded, and 1959, 5,467,352 deportable aliens were permitted to depart voluntarily. Their number reached an all-time high—1,074,277—in 1954.

Most aliens deported are destined for Mexico and Canada. For example, of the 7,988 aliens deported in 1959, 3,608 were deported to Mexico and 992 to Canada. Only 1,999 were deported to European countries; of these 749 to Greece; 409 to Italy; 163 to Spain; 122 to Germany; and 105 to Great Britain. Of the 22,307 aliens permitted to depart voluntarily in 1959, 4,139 went to Mexico; 2,922 to the West Indies; 2,864 to Great Britain; 2,157 to Canada; and 2,126 to Greece.

The following table lists the causes of deportation for the 7,988 aliens deported in 1959.

Cause of Deportation	Number of Aliens Deported	Cause of Deportation	Number of Aliens Deported
Entered without inspection or by false statements	3,191	Violators of narcotic laws	130
Failed to maintain nonimmigrant status	3,059	Immoral classes	126
Criminals	547	Mental or physical defectives	78
Entered without proper documents	483	Public charges	15
Previously excluded or deported	332	Subversives or anarchists	7
		Miscellaneous grounds	20

Table D shows the number of aliens deported and permitted to depart voluntarily for the years 1892 through 1959.

TABLE D

ALIENS DEPORTED AND ALIENS DEPARTED VOLUNTARILY
UNDER DEPORTATION PROCEEDINGS
YEARS ENDED JUNE 30, 1892 - 1959

Period	Total	Aliens deported	Aliens departed voluntarily under deportation proceedings ¹⁷
1892-1959	5,953,099	485,747	5,467,352
1892-1900	3,127	3,127	.....
1901-1910	11,558	11,558	.....
1911-1920	27,912	27,912	.....
1921-1930	164,390	92,157	72,233
1921	4,517	4,517	.....
1922	4,345	4,345	.....
1923	3,661	3,661	.....
1924	6,409	6,409	.....
1925	9,495	9,495	.....
1926	10,904	10,904	.....
1927	26,674	11,662	15,012
1928	31,571	11,625	19,946
1929	38,796	12,908	25,888
1930	28,018	16,631	11,387
1931-1940	210,416	117,086	93,330
1931	29, 61	18,142	11,719
1932	30,201	19,426	10,775
1933	30,212	19,865	10,347
1934	16,889	8,879	8,010
1935	16,297	8,319	7,978
1936	17,446	9,195	8,251
1937	17,617	8,829	8,788
1938	18,553	9,275	9,278
1939	17,792	8,202	9,590
1940	15,548	6,954	8,594
1941-1950	1,581,774	110,849	1,470,925
1941	10,938	4,407	6,531
1942	10,613	3,709	6,904
1943	16,154	4,207	11,947
1944	39,449	7,179	32,270
1945	80,760	11,270	69,490
1946	116,320	14,375	101,945
1947	214,543	18,663	195,880
1948	217,555	20,371	197,184
1949	296,337	20,040	276,297
1950	579,105	6,628	572,477
1951	686,713	13,544	673,169
1952	723,959	20,181	703,778
1953	905,236	19,845	885,391
1954	1,101,228	26,951	1,074,277
1955	247,797	15,028	232,769
1956	88,188	7,297	80,891
1957	68,461	5,082	63,379
1958	67,742	7,142	60,600
1959	64,598	7,988	56,610

¹⁷ Aliens departed voluntarily under deportation proceedings first recorded in 1927.

CHAPTER 51

REFUGEE AND EMERGENCY LEGISLATION

SECTION.

1. Background.
2. Netherlands nationals displaced from Indonesia—Act of September 2, 1958, as amended.
 - (a) Remedial legislation.
 - (b) Qualification requirements.
 - (c) Interpretation.
 - (d) Visa symbol.
3. Distressed nationals of Portugal from Azores Islands.
 - (a) Remedial legislation.
 - (b) Qualification requirements.
 - (c) Interpretation.
 - (d) Visa symbol.
4. Creation of record of admission for certain Hungarian refugees.
5. Uniting refugee families—Act of September 22, 1959.
 - (a) Background.
 - (b) Remedial legislation.
 - (c) Interpretation.
 - (d) Visa symbol.
6. Parole of "refugee-escapees"—Act of July 14, 1960.
 - (a) Background and summary.
 - (b) Refugee-escapees qualified for parole.
 - (c) Definition of term "refugee-escapee."
 - (d) Refugees under Mandate of High Commissioner.
 - (e) Numerical limitation on the parole of aliens.
 - (f) Parole procedure.
 - (1) Application.
 - (2) Assurance of employment, housing and transportation.
 - (3) Action on application.
 - (g) "Difficult to resettle" refugee-escapees.
 - (h) Parole of spouses and children.
 - (i) Creation of record of permanent admission.
 - (j) Report by Attorney General.
 - (k) Termination of parole program.

§ 1. Background.—Since the refugee problem emerged at the close of World War II as a phenomenon affecting not only the welfare of those directly involved but also the economic and political stability of countries of refuge, the Congress has made repeated provisions to meet the responsibility of the United States as a world leader. The primary effect of the measures passed by Congress was to authorize the admission of persons irrespective of the quota restrictions of the existing general immigration laws. At first, under the Displaced Persons Act, this was achieved by charging those admitted against quotas of future years. Later the special acts listed below authorized the issuance of special nonquota visas.¹

¹ Charges against future quotas made under the Displaced Persons Act were removed by Congress in 1957; see ch. 8, § 4.

The Displaced Persons Act of 1948, as amended, authorized the admission of 415,744 displaced persons and German ethnic refugees.² The Refugee Relief Act of 1953, as amended, authorized the admission of 186,000 refugees from Communist persecution, military operations and natural calamity, 19,000 Italian, Greek and Netherlands close relatives of American citizens and permanent resident aliens, and 4,000 orphans. It also permitted 5,000 refugees in the United States to acquire permanent resident status.³ In 1957, Congress authorized that the 18,656 special nonquota immigrant visas which remained unused at the expiration of the Refugee Relief Act on December 31, 1956, be issued to victims of racial, religious or political persecution from Communist countries and countries in the Middle East and to other victims of political upheavals and natural disasters.⁴ Congress also authorized the permanent admission of Hungarian refugees who were paroled into the United States after the Hungarian Revolution of October 1956⁵ and made other provisions for the relief of refugees and victims of other political upheavals and natural disasters.

The following sections of this chapter deal with those relief measures passed by Congress which are still in effect. These measures have a limited life expectancy through the provision of expiration dates, by the numerical limitation of the number of aliens who may benefit from them, or by the provision of cut-off dates for the filing of petitions or visa applications as a condition of qualification.

§ 2. Netherlands nationals displaced from Indonesia—Act of September 2, 1958, as amended.

(a) **Remedial legislation.** The Act of September 2, 1958, as amended,⁶ authorizes the issuance of 6,272 special nonquota immigrant visas on or before June 30, 1962, to nationals or citizens of the Netherlands who have been displaced from their usual

² See ch. 1, § 13(g). See also Auerbach, *The Admission and Resettlement of Displaced Persons in the United States*, 1949, and Revised Edition, 1950.

³ See ch. 1, § 15; see also ch. 40, First Edition.

⁴ See ch. 1, § 15(c). This provision is fully discussed in the 1959 Supplement to the First Edition, pp. 145 to 149.

⁵ See § 6, *infra*. For a statistical summary of displaced persons, refugees, and parolees admitted into the United States from 1946 through 1959, prepared by the Immigration and Naturalization Service, see "Admission of Refugees on Parole," Hearings before Subcommittee of House Judiciary Committee on H.J.Res. 397, 86th Congress, 1960, pp. 32 through 41; see also Eckerson, "United States Immigration since World War II," *The Annals*, March 1958.

⁶ Public Law 85-892 (72 Stat. 1712), as amended by §§ 5 and 6 of the Act of July 14, 1960, Public Law 86-648 (74 Stat. 505).

place of abode in the Republic of Indonesia subsequent to January 1, 1949, and who were residing in continental Netherlands on September 2, 1958. Special nonquota immigrant visas, without numerical limitation, may be issued on or before June 30, 1962, to the accompanying spouse of any such alien and his accompanying unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters, and sons or daughters adopted prior to July 1, 1958.

(b) **Qualification requirements.** An applicant for a visa under this provision must meet all qualitative requirements of the Immigration and Nationality Act. A special nonquota immigrant visa may be issued only to an applicant if a quota number is not available to him at the time of his application for a visa.

(c) **Interpretation.** Since the Act of September 2, 1958, as amended, makes its benefits available to "nationals or citizens of the Netherlands" without limiting its applicability to persons chargeable to the quotas of Indonesia or the Netherlands or to any other specified quota, it is conceivable that such a national or citizen who otherwise meets the terms of the act is chargeable to an open quota under the rules of quota chargeability⁷ and therefore may not be issued a special nonquota immigrant visa. For example, a citizen of the Netherlands who is chargeable to the Irish quota which is currently available, although meeting the other provisions of the act, could not be issued a special nonquota visa inasmuch as an Irish quota number is available to him. Assuming that the first preference portion of the quota for Indonesia is currently available, an applicant for a first preference quota visa who is a national of the Netherlands born in Indonesia could not be issued a special nonquota immigrant visa under the Act of September 2, 1958, because an Indonesian quota number would be available to him at the time of his application for a visa.

(d) **Visa symbol.** A special nonquota visa issued to a Netherlands national displaced from Indonesia is identified by the symbol "K-13," and a visa issued to his accompanying spouse or unmarried minor son or daughter by the symbol "K-14." (22 CFR 42.12(a))

§ 3. Distressed nationals of Portugal from Azores Islands.

(a) **Remedial legislation.** The Act of September 2, 1958, as amended⁸ authorizes the issuance of 2,000 special nonquota immigrant visas on or before June 30, 1962, to nationals or citizens

⁷ See chs. 9, 10.

⁸ Public Law 85-892 (72 Stat. 1712), as amended by §§ 5 and 6 of the Act of July 14, 1960, Public Law 86-648 (74 Stat. 505).

of Portugal who, because of natural calamity in the Azores Islands subsequent to September 1, 1957, are out of their usual place of abode in these islands and unable to return thereto, and who are in urgent need of assistance for the essentials of life. Special nonquota immigrant visas, without numerical limitation, may be issued on or before June 30, 1962, to the accompanying spouse of any such alien and his accompanying unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters, and sons and daughters adopted prior to July 1, 1958.

(b) **Qualification requirements.** An applicant for a visa under this provision must meet all qualitative requirements of the Immigration and Nationality Act. A special nonquota visa may be issued only to an applicant if a quota number is not available to him at the time of his application for a visa.

Portuguese nationals receiving visas described in this section are exempt from paying the statutory fee for the application and issuance of immigrant visas.

(c) **Interpretation.** As the terms of the Act of September 2, 1958 refer to "nationals or citizens of Portugal," without limiting its applicability to persons chargeable to the Portuguese or any other specified quota, it is conceivable that such a national or citizen who otherwise meets the terms of the act is chargeable to an open quota under the rules of quota chargeability⁹ and therefore may not be issued a special nonquota immigrant visa. For example, a citizen or national of Portugal who was born in Great Britain would be chargeable to the quota of Great Britain which is readily available and therefore could not be issued a special nonquota immigrant visa without fee under the Act of September 2, 1958, although distressed because of natural calamity in the Azores Islands.

(d) **Visa symbol.** A special nonquota visa issued to an alien in this category is identified by the symbol "K-11," and a visa issued to his accompanying spouse or unmarried son or daughter by the symbol "K-12." (22 CFR 42.12(a))

§ 4. Creation of record of admission for certain Hungarian refugees.—The Act of July 25, 1958,¹⁰ authorized the creation of records of admission for permanent residence in the case of aliens who were paroled into the United States as refugees from the Hungarian revolution.¹¹

⁹ See chs. 9, 10.

¹⁰ Public Law 85-559 (72 Stat. 419).

¹¹ See ch. 38, § 4.

An alien, in order to qualify for the benefits of this act, must show that he:

(a) is a refugee from the Hungarian revolution paroled into the United States under Section 212(d)(5) subsequent to October 23, 1956;

(b) has been in the United States for at least two years;

(c) has not acquired permanent residence;

(d) was admissible as an immigrant at the time of his arrival in the United States and is so admissible at the time of his inspection and examination except that he was not and is not in possession of an immigrant visa and passport as required by Section 212(a)(20).

The eligibility of an alien under the Act of July 25, 1958 is determined by the Immigration and Naturalization Service in admission proceedings.¹²

Once the applicant has satisfied the Immigration and Naturalization Service of his eligibility, he is regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival and an appropriate record of admission is created.

No fee is prescribed in this procedure. An alien in whose case the creation of a record of admission has been authorized is not charged to the quota of his quota area. 31,911 aliens are potentially eligible for the benefit of the Act of July 25, 1958.

§ 5. Uniting refugee families—Act of September 22, 1959.

(a) **Background.** There were 188,752 immigrants who came to the United States under the Refugee Relief Act of 1953, as amended, which expired on December 31, 1956.¹³ While most of these immigrants came with their families, there are a number of instances in which members of the immediate families of refugees were left behind for reasons of health, for economic reasons, or because of the separation of the family existing at the time of the migration of the principal. In most of these cases the preceding head of the family has filed a petition for the remaining members of his family according them preference quota status. However, as a result of the oversubscription of certain quotas, some of these families are still separated.

(b) **Remedial legislation.** To remedy the situation described under (a), Section 6 of the Act of September 22, 1959¹⁴ accords

¹² See ch. 37.

¹³ *Annual Report of the Immigration and Naturalization Service*, 1958, p. 27.

¹⁴ Public Law 86-363 (73 Stat. 645).

nonquota status to the husband, wife, and child of any permanent resident alien who was admitted into the United States under the provisions of the Refugee Relief Act of 1953, as amended, if a petition for third preference quota status was approved by the Attorney General before January 1, 1959. Parents of United States citizens who came to the United States under the Refugee Relief Act are accorded nonquota status under the same condition. To benefit from these provisions the alien must have retained his relationship to the petitioner and the status as established in the approved petition.

An alien applying for a special nonquota visa under Section 6 is required to present to the consular officer evidence that the petitioner was admitted into the United States under the Refugee Relief Act of 1953, as amended, or had his status in the United States adjusted under Section 6 of that Act. (22 CFR 42.27(f))

(c) **Interpretation.** The condition that the visa applicant must have retained his relationship to the petitioner and the status established in the approved petition, is not met if the petitioner has died since the approval of the petition.

The provisions of Section 6 are interpreted to confer nonquota status upon the spouse of an alien admitted under the Refugee Relief Act even if the marriage occurred during a temporary visit abroad by the alien following his admission into the United States. The child of a mother entitled to nonquota status under Section 6 of the Act of September 22, 1959 as the beneficiary of a third preference petition approved prior to January 1, 1959 who was born subsequent to the approval of the petition for the mother is entitled to nonquota status under Section 6.¹⁵

(d) **Visa symbol.** A special nonquota visa issued to a spouse or child of an alien admitted under the Refugee Relief Act of 1953 is identified by the insertion in the visa of the symbol "K-20"; a visa issued to the parent of a United States citizen admitted as an alien under the Refugee Relief Act of 1953 is identified by the symbol "K-19." (22 CFR 42.12(a))

§ 6. Parole of "refugee-escapees"—Act of July 14, 1960.

(a) **Background and Summary.** In an effort to help resolve the world refugee problem, the General Assembly of the United Nations adopted on September 5, 1958, a resolution promulgating a World Refugee Year beginning on July 1, 1959. The participation of the United States in the World Refugee Year is based on a Presidential Proclamation of May 19, 1959.¹⁶ The Congress,

¹⁵ Visa Office Bulletin No. 56, May 27, 1960.

¹⁶ Proclamation No. 3292 (24 Fed.Reg. 4123).

recognizing the desirability of closing the several refugee camps still maintained fifteen years after the end of World War II made provisions in the Act of July 14, 1960 for the parole into the United States of refugee-escapees during a two-year period, ending July 1, 1962. The number of aliens permitted to be so paroled is fixed in proportion to the number of refugees resettled by other countries.

(b) Refugee-escapees qualified for parole. An alien is qualified for parole if he:

(1) is a refugee-escapee as that term is defined in Section 15(c) (1) of the Act of September 11, 1957;

(2) applies for parole while physically present within the limits of any country which is not Communist, Communist-dominated, or Communist-occupied;

(3) is not a national of the area in which the application is made; and

(4) is within the mandate of the United Nations High Commissioner for Refugees. (Section 1, Act of July 14, 1960)¹⁷

(c) Definition of term "refugee-escapee." The term "refugee-escapee," as defined in Section 15(c) (1) of the Act of September 11, 1957, means any alien who, because of persecution or fear of persecution on account of race, religion, or political opinion, has fled or will flee:

(1) from any Communist, Communist-dominated, or Communist-occupied area, or

(2) from any country within the general area of the Middle East, and

(3) cannot return to such area, or to such country, on account of race, religion, or political opinion.

The term "general area of the Middle East" means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south.¹⁸

(d) Refugees under Mandate of High Commissioner. As stated under (b) above, one qualification requirement for parole is that the applicant is under the mandate of the United Nations High Commissioner for Refugees. The mandate of the High Commissioner extends only to those refugees who do not have the rights and obligations of nationals in the country in which

¹⁷ 74 Stat. 504.

¹⁸ Public Law 85-316 (71 Stat. 643, 644).

they reside and who do not receive assistance under other refugee programs conducted by other organs or agencies of the United Nations. The mandate of the United Nations High Commissioner for Refugees is contained in Chapter 2 of the Statute of the Office of the United Nations High Commissioner for Refugees which was adopted by the General Assembly of the United Nations at its 325th plenary meeting on December 14, 1950 (Resolution No. 428-V). The portion of that statute commonly referred to as the Mandate of the United Nations High Commissioner for Refugees reads as follows:

The competence of the High Commissioner shall extend to:

A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of the present paragraph;

The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

(a) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(b) Having lost his nationality, he has voluntarily reacquired it; or

(c) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(d) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(e) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

(f) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;

B. Any other person who is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of **his race, religion, nationality or political opinion** and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.¹⁹

(e) **Numerical limitation on the parole of aliens.** The Secretary of State is required to submit to the Attorney General at six-month intervals advisory reports indicating the number of refugee-escapees who have availed themselves of resettlement opportunities offered by nations other than the United States. (Section 2(a), Act of July 14, 1960)²⁰

In the computation of this report only persons who have migrated and acquired permanent residence in countries other than those in which they were found at the termination of hostilities or where they had sought asylum are to be considered. Persons who have been economically, socially, or legally integrated in the countries of their "first asylum" are not to be counted.²¹

Within the six-month period immediately following the submission of the report by the Secretary of State, the Attorney General is authorized to parole a number of refugee-escapees not exceeding twenty-five per cent of the number resettled by other countries. (Section 2(a), Act of July 14, 1960)²²

(f) **Parole procedure.**

(1) **Application.** An application for parole as a refugee-escapee must be submitted by the applicant on Form I-590, "Registration for Classification as Refugee-Escapee." A separate registration form must be executed by each registrant and submitted in one copy. In the case of a child under fourteen years the form is to be executed by his parent or guardian. The application is to be submitted to the Officer-in-Charge of the nearest overseas office of the Immigration and Naturalization Service.²³ (8 CFR 212.5(b) and Form I-590).

In addition to identifying information the form calls for data on the alien's refugee-escapee status and his sponsorship in the United States.

(2) **Assurance of employment, housing and transportation.** Parole will not be authorized until assurances of employment

¹⁹ Senate Report No. 1651, 86th Congress, Second Session, pp. 23, 24.

²⁰ 74 Stat. 504.

²¹ Senate Report No. 1651, *supra*, pp. 24, 25.

²² 74 Stat. 504.

²³ For list of offices of the Immigration and Naturalization Service see Appendix E.

and housing in the United States for a period of two years and assurances of transportation from the applicant's place of abode to the point of final destination in the United States have been provided. These assurances must be made on Form I-591, "Assurance by United States Sponsor in Behalf of a Refugee-Escapee." This form makes provision for its execution by individual sponsors and by voluntary agencies. The individual sponsor is required to show whether he is related to the applicant for parole and must state the number of persons whose immigration to the United States he has sponsored during the past five years. Individual sponsors must attach an offer of employment, showing the location and time of employment to be provided. They must also show the type of housing that will be made available. The individual sponsor is also required to state whether he is a citizen by birth or naturalization. (8 CFR 212.5(b) and Instructions, Form I-591)

(3) **Action on application.** Once an Immigration Officer-in-Charge outside the United States has approved the application of a refugee-escapee for parole, the district director at the port of entry in the United States is authorized to parole the applicant if he arrives within six months after the date of the approval of the application. (8 CFR 212.5(b))

(g) **"Difficult to resettle" refugee-escapees.** The Attorney General is authorized to parole within the numerical limitation described under (d), above, not more than 500 refugee-escapees listed by the United Nations High Commissioner for Refugees as "difficult to resettle." Congress made provision for this group of aliens to assist with the rehabilitation of refugees who, because of age or physical handicap, are listed as "difficult to resettle" in the rosters of the United Nations High Commissioner, but who (a) are of good moral character, (b) are not institutional cases, (c) suffer from no contagious diseases, and (d) can, in the opinion of the sponsoring voluntary agency, be made self-supporting with some assistance or are members of family units which can be considered self-supporting.²⁴

An applicant for parole who is listed as "difficult to resettle" may be paroled only if:

- (1) the Attorney General approves a finding by a voluntary relief or welfare organization recognized for this purpose that the alien can, with some assistance, become self-supporting, or is a member of a family unit capable of becoming self-supporting; and

²⁴ Senate Report No. 1651, *supra*, p. 25.

(2) the applicant does not suffer from conditions requiring institutionalization. (Section 2(b), Act of July 14, 1960)²⁵

(h) **Parole of spouses and children.** The statute is silent on the question whether spouses and children of a refugee-escapee may accompany him within or without the numerical limitations applicable to the principal applicants. Immigration regulations, however, provide that "the provisions of the Act of July 14, 1960, will be applied to the spouse and children as defined in Section 101(b) (1) of the Immigration and Nationality Act,²⁶ of a refugee-escapee . . ." if accompanying him. (8 CFR 212.5(b))

(i) **Creation of record of permanent admission.** A refugee-escapee paroled into the United States may acquire the status of an alien lawfully admitted for permanent residence if he meets the following requirements:

(1) he has been in the United States for at least two years from the date following his arrival in the United States on parole;

(2) he has not acquired permanent residence;

(3) he is found to be admissible as an immigrant except that he was not and is not in possession of an immigrant visa and passport; and

(4) his parole has not been terminated previously by the Attorney General.²⁷

Whether a parolee is eligible for the creation of a record of permanent admission is determined in admission proceedings.²⁸ Once the applicant has satisfied the Immigration and Naturalization Service of his eligibility, a record is established showing his lawful admission for permanent residence as of the date of his arrival in the United States. (Sections 3 and 4, Act of July 14, 1960²⁹ and 8 CFR 212.5(b))

No fee is prescribed for this procedure. Aliens in whose case the creation of a record of admission has been authorized are not charged to the quota of their respective quota area.

(j) **Report by Attorney General.** The Congress is kept informed of the progress of the parole program by reports the Attorney General is required to submit twice yearly. (Section 2(a), Act of July 14, 1960)³⁰

²⁵ 74 Stat. 504.

²⁶ For definition of term "spouse" see ch. 5, § 3(e); for definition of term "child" see ch. 12, § 2(b).

²⁷ For a discussion of the status of a paroled alien in the United States see ch. 38, § 4.

²⁸ See ch. 37.

²⁹ 74 Stat. 505.

³⁰ 74 Stat. 504.

(k) **Termination of parole program.** The authority of the Attorney General to parole refugee-escapees terminates on July 1, 1962.

In addition, the Attorney General is required to discontinue the paroling of refugee-escapees if either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the continuation of the parole program. (Section 2(a), Act of July 14, 1960)³¹

³¹ 74 Stat. 504. Referring to the fact that, upon the adoption of a single resolution by either House of Congress the Attorney General's parole authority could be terminated, the President, in approving the Act of July 14, 1960, made the following observation: "The Attorney General has advised me that there is a serious question as to whether this provision is constitutional. Nevertheless, in view of the short period for which this power is given and the improbability that the issue will arise, it is believed that it would be better to defer a determination of the effect of such possible action until it is taken." (Congressional Record of July 15, 1960, p. A 6003)

CHAPTER 52

SPECIAL AND TEMPORARY LEGISLATION

SECTION.

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 - (1) Petition requirement.
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 - (e) Assistance by social welfare agencies.
3. Nonquota status for certain preference quota immigrants—Act of September 11, 1957, as amended.
4. Nonquota status for certain preference quota immigrants—Act of September 22, 1959.
5. Adjustment of status of certain skilled aliens in the United States—Act of September 11, 1957.
6. Importation of agricultural workers.
 - (a) Background and history.
 - (b) Importation of labor since the Immigration and Nationality Act.
 - (1) Mexican agricultural workers—"Bracero program."
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 - (3) Statistics.

§ 1. **Summary.**—Measures in the immigration field passed by the Congress since the enactment of the Immigration and Nationality Act in 1952 have followed one of three patterns:

(a) they either amended existing law, both in form and content;¹ or

(b) they set up independent statutory provisions specifying a date of expiration;² or

(c) they set up independent statutory provisions benefiting specified classes of aliens who had to meet certain deadlines of registration or other dates determining their qualification, thereby making this type of legislation self-liquidating.³

¹ For example, §§ 1, 2 and 3 of the Act of September 22, 1959, recasting the preference quota system (73 Stat. 644). See ch. 11.

² For example, § 2 of the Act of September 9, 1959 (73 Stat. 490), authorizing for a limited period of time the admission of eligible orphans. See § 2, *infra*.

³ For example, § 4 of the Act of September 22, 1959 (73 Stat. 644), according non-

Formal amendments to the Immigration and Nationality Act are discussed in the appropriate chapters dealing with the subject matter. Temporary refugee and emergency legislation is discussed in Chapter 51. This chapter describes other immigration measures which are either temporary in character or self-liquidating.⁴

§ 2. Immigration of eligible orphans—Act of September 11, 1957, as amended.

(a) **Summary.** An unlimited number of special nonquota immigrant visas may be issued on or before June 30, 1961 to aliens who:

(1) are eligible orphans as described below;

(2) are under fourteen years of age at the time the visa is issued; and

(3) have been lawfully adopted abroad or will be adopted in the United States by a United States citizen and spouse, regardless of the citizenship of the spouse. (Section 4, Act of September 11, 1957, as amended)⁵

(b) **Definition.** The term "eligible orphan" means an alien child:

(1) who is an orphan because of the death or disappearance of both parents, or because of abandonment or desertion by or separation or loss from, both parents, or who has only one parent due to the death or disappearance of, abandonment, or desertion by, or separation or loss from, the other parent and the remaining parent is incapable of providing care for the orphan and has, in writing, irrevocably released him for emigration and adoption; and

(2) who either has been lawfully adopted abroad by a United States citizen and spouse,⁶ or is coming to the United

quota status to certain preference quota immigrants in whose behalf visa petitions were approved before January 1, 1959. See § 4, *infra*.

⁴ The provisions of § 6 of the Act of September 11, 1957 (71 Stat. 640) as amended by Act of September 9, 1959, § 1 (73 Stat. 490), permitting the admission until June 30, 1961 of certain aliens afflicted with tuberculosis, are discussed for editorial reasons in ch. 34.

⁵ 71 Stat. 639 as amended by Act of September 9, 1959, § 2 (73 Stat. 490); Act of July 14, 1960, § 7 (74 Stat. 505).

⁶ An illegitimate child living with mother and stepfather, who has been adopted by her United States citizen aunt with her mother's consent, does not meet definition of "eligible orphan," since the child cannot be regarded as having only one parent. Further ground of disqualification exists in that adoption by aunt who is divorced does not meet statutory requirement that adoption must be by a United States citizen *and* spouse. (Regional Commissioner, *In the Matter of D.*, Interim Decision 1066, April 6, 1960; approved by Assistant Commissioner, April 14, 1960)

States for adoption by a United States citizen and spouse; and

(3) who is eligible for admission into the United States except that the portion of the quota to which he would be chargeable is oversubscribed at the time his visa application is made. (Section 4(b) of the Act of September 11, 1957, as amended)

(c) Procedure.

(1) **Petition requirement.** A United States citizen and spouse who wish to bring to the United States an eligible orphan adopted abroad or to be adopted in the United States must file with the Immigration and Naturalization Service Form I-600, "Petition to Classify Alien as an Eligible Orphan."⁷ The petition must establish that the petitioners will care for the eligible orphan properly if he is admitted to the United States and, if he has not been adopted abroad, that they will adopt him in the United States and that the pre-adoption requirements, if any, of the State of the orphan's proposed residence have been met.

(2) **Supporting documents.** Petition Form I-600 must be accompanied by supporting documents showing that the alien child is an eligible orphan as described above, including:

- (i) Proof of United States citizenship of one spouse;
- (ii) Proof of marriage of both petitioners;
- (iii) Evidence that the petitioners are able to support and care for the orphan, such as letters from employers, banks, financial statements, copy of income tax returns;
- (iv) Certified copy of adoption decree with translation if orphan has been adopted abroad;
- (v) Evidence that the remaining parent is incapable of providing for the orphan's care and has, in writing, irrevocably released the orphan for emigration and adoption if the orphan has only one parent;
- (vi) Evidence that the pre-adoption requirements of the State of the orphan's proposed residence have been met if the child is to be adopted in the United States; and
- (vii) Fingerprint chart of each petitioner. (Instructions, Form I-600 and 8 CFR 205.2)

⁷ The petition requirement in the case of orphans already adopted abroad was introduced, according to Representative Walter, because of certain abuses involving "individuals who have made a lucrative business out of acting as intermediaries between the alien orphan and American couples desiring to adopt them." (Congressional Record of July 16, 1959, p. 12386)

(3) **Fee.** The fee for the filing of petition Form I-600 is \$10. (8 CFR 103.7(c))

(4) **Investigation.** Upon the submission of the petition an investigation is conducted by the Immigration and Naturalization Service to determine the child's qualification and that of his adoptive parents. The latter investigation must include a finding that the parents are persons of good moral character.⁸

(5) **Decision on petition.** If the petition is approved it will be forwarded to the Department of State. A decision denying the petition may be appealed within fifteen days after the mailing of the notification of the decision. (8 CFR 205.2 and 103.3)

(6) **Visa procedure.** Upon receipt of the approved petition, the Secretary of State will authorize the consular officer concerned to grant nonquota status to the beneficiary of the petition "after the consular officer has determined that such beneficiary is an eligible orphan . . ." (Section 4(b), Act of September 11, 1957, as amended) This language clarifies that the petition procedure prescribed does not affect the consular officer's responsibility to determine independently that the alien child is an "eligible orphan" and is otherwise qualified to receive a visa.⁹ (22 CFR 42.27(a))

A special nonquota visa issued to an eligible orphan adopted abroad is identified by the symbol "K-1"; such a visa issued to an orphan to be adopted in the United States by the symbol "K-2."¹⁰ (22 CFR 42.12(a))

(d) **Limitation.** A United States citizen and spouse may bring to the United States not more than two eligible orphans unless necessary to prevent the separation of brothers and sisters. Separate petitions must be filed for each beneficiary. (Section 4(a), Act of September 11, 1957, as amended, and Instructions, Form I-600)

The adoption of a child by proxy is valid if such adoption fulfills the legal requirements under State or foreign jurisdiction governing the adoption.¹¹ However, as explained above, regardless of the fact that an adoption has already been completed, the petition to accord nonquota status may be denied if it does not fulfill the requirements set by law.

⁸ For a definition of the term "good moral character" see ch. 5, § 3(d).

⁹ Auerbach, "Immigration Legislation, 1959," *Department of State Bulletin* of October 26, 1959, p. 604.

¹⁰ For period of validity of visa issued to an eligible orphan, see ch. 15, § 5(b).

¹¹ BIA, *In the Matter of T.*, 6, I. & N. Dec. 634, June 9, 1955.

(e) **Assistance by social welfare agencies.** The Immigration and Naturalization Service suggests that, in connection with the adoption of an orphan, assistance be obtained from a recognized social agency or from any public or private agency recognized by the appropriate State authority. The following recognized private social agencies have agreed to furnish assistance:

American Branch of International Social Service, Inc.
345 East 46th Street
New York 17, New York

Catholic Committee for Refugees
National Catholic Welfare Conference
265 West 14th Street
New York 11, New York

Church World Service, Inc.
215 Fourth Avenue
New York 3, New York

United HIAS Service, Inc.
425 Lafayette Street
New York 3, New York

(Instructions, Form I-600)

The information and conclusions supplied by recognized social agencies participating in the adoption arrangements are entitled to weight. However, the agencies' findings are not to be given any conclusive effect, since the ultimate determination is the responsibility of the Attorney General alone.¹²

§ 3. Nonquota status for certain preference quota immigrants—Act of September 11, 1957, as amended.—Under the provisions of the Act of September 11, 1957, aliens eligible for first, second, or third preference quota status as skilled aliens, their spouses and children, parents of American citizens, or spouses and children of permanent resident aliens, on the basis of petitions approved by the Attorney General prior to July 1, 1957, are to be issued nonquota immigrant visas. (Section 12, Act of September 11, 1957)¹³ The Act of August 21, 1958, Section 2, by adding Section 12A to the Act of September 11, 1957 amended this provision by authorizing nonquota status for aliens eligible for first preference quota status on the basis of a petition approved by the Attorney General before July 1, 1958, if a quota immigrant visa is not promptly available because the quota to

¹² Regional Commissioner, *In the Matter of A., 7, I. & N. Dec. 657*, February 21, 1958; approved by Assistant Commissioner.

¹³ 71 Stat. 642.

which they are chargeable is oversubscribed.¹⁴ (22 CFR 42.27 (c)) In order to qualify for nonquota status the petition conferring preference status upon the alien must be valid and the alien must be found to have retained his relationship to the petitioner, and status, as established in the petition.¹⁵

§ 4. Nonquota status for certain preference quota immigrants—Act of September 22, 1959.—Section 4 of the Act of September 22, 1959, following the pattern set by previous legislation, provided relief for the increasing number of relatives of United States citizens and permanent resident aliens who, though entitled to preference quota status, have to anticipate an extended waiting period under certain quotas.¹⁶ It accords nonquota status to all applicants for immigrant visas who were entitled to second, third, or fourth preference quota status if they were registered on a consular waiting list under a priority date earlier than December 31, 1953, and if a petition according them quota preference status had been approved by the Attorney General before January 1, 1959. Nonquota status is also accorded to the spouses and children of such aliens irrespective of whether they meet the deadline requirements applicable to their principals. The approval of a petition in behalf of the alien spouse or child is not required. (22 CFR 42.27(e))¹⁷

At the time of the passage of this provision, some 22,000 visa petitions approved before January 1, 1959 were in the hands of consular officers in behalf of applicants who were registered on consular waiting lists prior to December 31, 1953. Immigrants chargeable to the following quota and subquota areas were, in the order of the listing, expected to benefit primarily from this measure: Italy, Greece, Yugoslavia, Portugal, Jamaica, Spain, Palestine, Philippines, Lebanon, United Arab Republic, Japan, Chinese Persons, and Turkey. Of the 22,000 visa petitions on hand, some 12,000 were approved for aliens chargeable to the Italian quota.¹⁸

§ 5. Adjustment of status of certain skilled aliens in the United States—Act of September 11, 1957.—Section 9 of the Act of September 11, 1957 authorized an alien physically present within the United States on July 1, 1957 who is a skilled alien and the beneficiary of petition I-129 filed on his behalf prior

¹⁴ 72 Stat. 699.

¹⁵ For visa symbols used in the issuance of visas to aliens within this category, see ch. 6, § 2(b).

¹⁶ Public Law 86-363 (73 Stat. 644).

¹⁷ For visa symbols used in the issuance of visas to aliens within this category, see ch. 6, § 2(b).

¹⁸ Auerbach, "Immigration Legislation, 1959," *supra*, p. 602.

to September 11, 1957, to apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.¹⁹ This application may include the spouse and child of such alien who were physically present in the United States on July 1, 1957. The application is to be filed on Form I-507. The Attorney General is authorized to approve such application if he finds that the applicant is admissible to the United States except for the fact that an immigrant visa is not promptly available for issuance to him because the quota of the quota area to which the applicant is chargeable is oversubscribed. The benefits of this provision do not extend to an alien who entered the United States as an exchange visitor on or after June 4, 1956, or who acquired exchange-visitor status after that date unless he has received a waiver under its provisions. (Act of September 11, 1957, Section 9²⁰ and 8 CFR 245.1)

Nonquota status may be accorded the spouse and child residing abroad of a skilled alien whose status has been adjusted as described above if the marriage by virtue of which the relationship exists occurred prior to July 1, 1957. The approval of a petition in behalf of the alien spouse or child is not required. (22 CFR 42.27(b))²¹

Adoption of this provision was to remedy "an inconsistency involved in conceding on the one hand that the services of certain foreign scientists, physicians, skilled nurses, etc., are urgently needed in this country, while at the same time acknowledging the lack of available visas for this highly desirable class of immigrants and forcing them to depart or to remain in this country by sufferance."²²

§ 6. Importation of agricultural workers.

(a) **Background and history.** Shortages of domestic agricultural labor have periodically called for special legislative and administrative arrangements for the importation of foreign labor. These shortages which are most accentuated during planting and harvest time along the Mexican border are, however, not limited to that area, and foreign farm labor brought to the United States has included, in addition to Mexicans, Canadians, natives of British Guiana, Honduras, the British and French West Indies and, more recently, Spain and Japan.

¹⁹ Public Law 85-316 (71 Stat. 641).

²⁰ 71 Stat. 641.

²¹ For visa symbols used in the issuance of visas to aliens within this category, see ch. 6, § 2(b).

²² House Report No. 1199, 85th Congress, First Session, pp. 8, 9.

While the need for temporary agricultural workers existed long before World War II, manpower shortages in the United States made government intervention in the recruitment program for farm laborers imperative.²³

Before the enactment of the Immigration and Nationality Act, the importation of foreign farm laborers had to contend with the so-called contract labor provisions of the Immigration Act of 1917²⁴ which excluded from admission aliens coming to perform labor of any kind, skilled or unskilled, induced by offers or promises of employment. Recruitment programs before 1952, therefore, had to be based in part on a waiver of the alien's inadmissibility under the Secretary of Labor's, and later the Attorney General's, authority to waive grounds of inadmissibility²⁵ until this problem became the subject of special legislation, beginning with the Act of April 29, 1943.²⁶ This law permitted the entry of agricultural laborers born in Western Hemisphere countries and exempted them from many of the requirements for admission to this country, including the contract labor provisions of the Immigration Act of 1917.

After the expiration of this act and its extension on December 31, 1947, farm laborers were again imported under waivers granted by the Attorney General until Congress passed the Act of July 12, 1951 amending the Agricultural Act of 1949, by adding Title V relating to agricultural workers.²⁷ This act set up a new program for the recruitment of agricultural workers from Mexico.²⁸

(b) Importation of labor since the Immigration and Nationality Act.

(1) Mexican agricultural workers—"Bracero program."
The savings clause of the Immigration and Nationality Act specifically preserved the Act of July 12, 1951. (Section 405(e)) Several amendments of this act moved its expiration date up to December 31, 1961.²⁹ Under the terms of this act and the implementing agreements between the United States and Mexico, recruitment centers are set up by the Mexican Government at which American employers may recruit agricultural workers. After his recruitment the alien, commonly referred to as a

²³ Senate Report 1515, 81st Congress, Second Session, p. 573.

²⁴ § 3 (39 Stat. 875).

²⁵ Ninth Proviso to § 3.

²⁶ Public Law 45 (57 Stat. 70).

²⁷ Public Law 78 (65 Stat. 119), amending Public Law 439 (63 Stat. 1051).

²⁸ For literature on the farm labor program see Bibliography, "Agricultural Workers."

²⁹ 67 Stat. 500, 68 Stat. 28, 69 Stat. 615, 72 Stat. 934, and 74 Stat. 1021.

"bracero," is preliminarily inspected by officers of the Immigration and Naturalization Service and issued a conditional permit if he appears to be admissible under the provisions of the Immigration and Nationality Act. The inspection is completed at United States reception centers.

When admitted, the "bracero" is given Form I-100C, "Alien Laborer's Permit," which he retains while in the United States as proof of his legal status as an agricultural worker. A bracero may be admitted initially for a period from four weeks to six months and extensions may be granted with the concurrence of the Secretary of Labor up to eighteen months. The bracero must agree that, while in the United States, he will engage only in agricultural employment and that he will leave the United States upon the expiration of the period of his admission. (8 CFR 214.2(k))³⁰

Under the act no workers may be recruited unless the Secretary of Labor certifies that sufficient domestic workers are not available and that the employment of the foreign laborers will not adversely affect wages and working conditions of domestic agricultural workers similarly employed.

The significance of this temporary legislation is that it places responsibility for the recruitment of workers and management of the program with the Department of Labor while the Immigration and Naturalization Service is responsible for entry and departure control of the recruited aliens who are exempted from the visa requirement. The participation of the Department of Labor insures that the program is responsive to the changing domestic labor market.³¹

(2) **Agricultural workers other than Mexicans.** The temporary admission of agricultural and other temporary workers other than citizens and natives of Mexico, is subject to all the documentary requirements of the Immigration and Nationality Act. Such aliens must qualify as "temporary workers" and

³⁰ An alien who was admitted to the United States as an agricultural worker under the provisions of the Agricultural Act of 1949, as amended, not having acquired a non-immigrant classification under § 101(a)(15) of the Immigration and Nationality Act, is ineligible for change of nonimmigrant status under § 248 of the act. (Regional Commissioner, *In the Matter of C.*, Interim Decision 1026, July 21, 1959; approved by Assistant Commissioner, December 4, 1959) See ch. 42.

³¹ Since natives of Mexico are not subject to quota restrictions and as the contract labor laws were repealed by the Immigration and Nationality Act in 1952, an increasing number of Mexican agricultural and other workers have entered the United States as immigrants; see ch. 50. The almost uncontrolled influx of "wetbacks," i.e., Mexican laborers who enter the United States illegally by wading across the Rio Grande River, has been successfully controlled by the Immigration and Naturalization Service since 1954. (Annual Report of the Immigration and Naturalization Service, 1955, p. 14; see also Krichesky, "Importation of Alien Laborers," *I & N Reporter*, July 1956, p. 7)

must be beneficiaries of petitions approved by the Immigration and Naturalization Service.³² They are subject to the visa requirement unless this requirement has been waived under statutory authority as in the case of nationals of foreign contiguous territory or adjacent islands.³³

(3) **Statistics.** Considerable numbers of seasonal agricultural workers come to the United States every year. In 1959 their total number was 464,128, of which 447,535 were Mexicans, followed by 8,712 workers from the British West Indies; 6,892 from Canada; 607 from Japan; 99 from British Guiana; 56 from the French West Indies; and 227 Basque shepherders from Spain.³⁴

³² See ch. 26.

³³ See ch. 29, §§ 4, 5.

³⁴ Annual Report of the Immigration and Naturalization Service, 1959, p. 47; see also Krichesky, *supra*, p. 8. The program for the importation of Japanese farm laborers is discussed in Frye, "Supplemental Labor Program in California," *I & N Reporter*, July 1958, p. 5.

APPENDIX A

SECTION 212 OF THE IMMIGRATION AND NATIONALITY ACT,* AS AMENDED. GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION

SEC. 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

- (1) Aliens who are feeble-minded;
- (2) Aliens who are insane;
- (3) Aliens who have had one or more attacks of insanity;
- (4) Aliens afflicted with psychopathic personality, epilepsy, or a mental defect;
- (5) Aliens who are narcotic drug addicts or chronic alcoholics;
- (6) Aliens who are afflicted with tuberculosis in any form, or with leprosy, or any dangerous contagious disease;
- (7) Aliens not comprehended within any of the foregoing classes who are certified by the examining surgeon as having a physical defect, disease, or disability, when determined by the consular or immigration officer to be of such a nature that it may affect the ability of the alien to earn a living, unless the alien affirmatively establishes that he will not have to earn a living;
- (8) Aliens who are paupers, professional beggars, or vagrants;
- (9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime; except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of the application for a visa or other documentation, and more than five years prior to date of application for admission to the United States, unless the crime resulted in confinement in a prison or correctional institution, in which case such alien must have been released from such confinement more than five years prior to the date of the application for a visa or other documentation, and for admission, to the United States;
- (10) Aliens who have been convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were five years or more;
- (11) Aliens who are polygamists or who practice polygamy or advocate the practice of polygamy;
- (12) Aliens who are prostitutes or who have engaged in prostitution, or aliens coming to the United States solely, principally, or incidentally to engage in prostitution; aliens who directly or indirectly procure or at-

* 66 Stat. 182-188.

tempt to procure, or who have procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution or for any other immoral purpose; and aliens who are or have been supported by, or receive or have received, in whole or in part, the proceeds of prostitution or aliens coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution;

(13) Aliens coming to the United States to engage in any immoral sexual act;

(14) Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, if the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) sufficient workers in the United States who are able, willing, and qualified are available at the time (of application for a visa and for admission to the United States) and place (to which the alien is destined) to perform such skilled or unskilled labor, or (B) the employment of such aliens will adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply only to the following classes: (i) those aliens described in the nonpreference category of section 203(a)(4), (ii) those aliens described in section 101(a)(27)(C), (27)(D), or (27)(E) (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), unless their services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants and to be substantially beneficial prospectively to the national economy, cultural interest or welfare of the United States;

(15) Aliens who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges;

(16) Aliens who have been excluded from admission and deported and who again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a place outside the United States or their attempt to be admitted from foreign contiguous territory the Attorney General has consented to their reapplying for admission;

(17) Aliens who have been arrested and deported, or who have fallen into distress and have been removed pursuant to this or any prior act, or who have been removed as alien enemies, or who have been removed at Government expense in lieu of deportation pursuant to section 242(b), unless prior to their embarkation or reembarkation at a place outside the United States or their attempt to be admitted from foreign contiguous territory the Attorney General has consented to their applying or reapplying for admission;

(18) Aliens who are stowaways;

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;

(20) Except as otherwise specifically provided in this Act, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 211(e);

(21) Except as otherwise specifically provided in this Act, any quota immigrant at the time of application for admission whose visa has been issued without compliance with the provisions of section 203;

(22) Aliens who are ineligible to citizenship, except aliens seeking to enter as nonimmigrants; or persons who have departed from or who have remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency, except aliens who were at the time of such departure nonimmigrant aliens and who seek to reenter the United States as nonimmigrants;

(23) Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative or preparation of opium or coca leaves, or isoniprocaine or any addiction-forming or addiction-sustaining opiate; or any alien who the consular officer or immigration officers know or have reason to believe is or has been an illicit trafficker in any of the aforementioned drugs;¹

(24) Aliens (other than those aliens who are native-born citizens of countries enumerated in section 101(a)(27)(C) and aliens described in section 101(a)(27)(B)) who seek admission from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory line, or if signatory, a noncomplying transportation line under section 238(a) and who have not resided for at least two years subsequent to such arrival in such territory or adjacent islands;

(25) Aliens (other than aliens who have been lawfully admitted for permanent residence and who are returning from a temporary visit abroad) over sixteen years of age, physically capable of reading, who cannot read and understand some language or dialect;

(26) Any nonimmigrant who is not in possession of (A) a passport valid for a minimum period of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period; and (B) at the time of application for admission a valid nonimmigrant visa or border crossing identification card;

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;

(28) Aliens who are, or at any time have been, members of any of the following classes:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

¹ As amended by the Act of July 18, 1956 (70 Stat. 575) and the Act of July 14, 1960 (74 Stat. 505).

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and gov-

ernmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

(I) Any alien who is within any of the classes described in subparagraphs (B), (C), (D), (E), (F), (G), and (H) of this paragraph because of membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise inadmissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General when applying for admission to the United States and the Attorney General finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for admission actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under (ii) of this subparagraph;

(29) Aliens with respect to whom the consular officer or the Attorney General knows or has reasonable ground to believe probably would, after entry, (A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, (B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means, or (C) join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950;

(30) Any alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy pursuant to section 237(e), whose protection or guardianship is required by the alien ordered excluded and deported;

(31) Any alien who at any time shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(b) The provisions of paragraph (25) of subsection (a) shall not be applicable to any alien who (1) is the parent, grandparent, spouse, daughter, or son of an admissible alien, or any alien lawfully admitted for permanent residence, or any citizen of the United States, if accompanying such admissible alien, or coming to join such citizen or alien lawfully admitted, and if otherwise admissible, or (2) proves that he is seeking admission to the United States to avoid religious persecution in the country of his last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against such alien or any group to which he belongs because of his religious faith. For the purpose of ascertaining whether an alien can read under paragraph (25) of subsection (a), the consular officers and immigration officers shall be furnished with slips of uniform size, prepared under direction of the Attorney General, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type, in one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made and shall be required to read and understand the words printed on the slip in such language or dialect.

(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraph (1) through (25) and paragraphs (30) and (31) of subsection (a). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 211(b).

(d) (1) The provisions of paragraphs (11) and (25) of subsection (a) shall not be applicable to any alien who in good faith is seeking to enter the United States as a nonimmigrant.

(2) The provisions of paragraph (28) of subsection (a) of this section shall not be applicable to any alien who is seeking to enter the United States temporarily as a nonimmigrant under paragraph (15)(A)(iii) or (15)(G)(v) of section 101(a).

(3) Except as provided in this subsection, an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27) and (29)), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (B) who is inadmissible under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27) and (29)), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General.

(4) Either or both of the requirements of paragraph (26) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof

having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(d).

(5) The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(6) The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of excludable aliens applying for temporary admission under this subsection. The Attorney General shall make a detailed report to the Congress in any case in which he exercises his authority under paragraph (3) of this subsection on behalf of any alien excludable under paragraphs (9), (10), and (28) of subsection (a).

(7) The provisions of subsection (a) of this section, except paragraphs (20), (21), and (26), shall be applicable to any alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is excluded from admission to the United States, shall be immediately deported in the manner provided by section 237(a) of this Act.²

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (26), (27), and (29) of subsection (a) of this section.

(e) Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

² As amended by the Act of July 7, 1958 (72 Stat. 351) and by the Act of March 18, 1959 (73 Stat. 13).

APPENDIX B
SECTION 241 OF THE IMMIGRATION AND NATIONALITY
ACT,* AS AMENDED. GENERAL CLASSES OF
DEPORTABLE ALIENS

SEC. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States;

(3) hereafter, within five years after entry, becomes institutionalized at public expense because of mental disease, defect, or deficiency, unless the alien can show that such disease, defect, or deficiency did not exist prior to his admission to the United States;

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;

(5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266(c) of this title, or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended, or has been convicted under section 1546 of title 18 of the United States Code;

(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear,

* 66 Stat. 204-208.

or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, dis-

tribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

(7) is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage, in any of the activities described in paragraph (27) or (29) of section 212(a), unless the Attorney General is satisfied, in the case of any alien within category (C) of paragraph (29) of such section, that such alien did not have knowledge or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950 have such knowledge or reason to believe) that such organization was a Communist organization;

(8) in the opinion of the Attorney General, has within five years after entry become a public charge from causes not affirmatively shown to have arisen after entry;

(9) was admitted as a nonimmigrant and failed to maintain the non-immigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status;

(10) entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 238(a) and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien who is a native-born citizen of any of the countries enumerated in section 101(a)(27)(C) and an alien described in section 101(a)(27)(B));

(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate;¹

(12) by reason of any conduct, behavior or activity at any time after entry became a member of any of the classes specified in paragraph (12) of section 212(a); or is or at any time after entry has been the manager, or is or at any time after entry has been connected with the management, of a house of prostitution or any other immoral place;

(13) prior to, or at the time of any entry, or at any time within five years after any entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law;

(14) at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semi-automatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a saved-off shotgun;

¹ As amended by the Act of July 18, 1956 (70 Stat. 575) and the Act of July 14, 1960 (74 Stat. 505).

(15) at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940;

(16) at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940; or

(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: has been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amendment thereto, the judgment on such conviction having become final, namely: an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes", approved June 15, 1917, or the amendment thereof approved May 16, 1918; sections 791, 792, 793, 794, 2388, and 3241, title 18, United States Code; an Act entitled "An Act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes", approved October 6, 1917; an Act entitled "An Act to prevent in time of war departure from and entry into the United States contrary to the public safety", approved May 22, 1918; section 215 of this Act; an Act entitled "An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes", approved April 20, 1918; sections 2151, 2153, 2154, 2155, and 2156 of title 18, United States Code; an Act entitled "An Act to authorize the President to increase temporarily the Military establishment of the United States", approved May 18, 1917, or any amendment thereof or supplement thereto; the Selective Training and Service Act of 1940; the Selective Service Act of 1948; the Universal Military Training and Service Act; an Act entitled "An Act to punish persons who make threats against the President of the United States", approved February 14, 1917; section 871 of title 18, United States Code; an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes", approved October 6, 1917, or any amendment thereof; the Trading With the Enemy Act; section 6 of the Penal Code of the United States; section 2384 of title 18, United States Code; has been convicted of any offense against section 13 of the Penal Code of the United States committed during the period of August 1, 1914, to April 6, 1917, or of a conspiracy occurring within said period to commit an offense under said section 13 or of any offense committed during said period against the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, in aid of a belligerent in the European war; section 960 of title 18, United States Code; or

(18) has been convicted under section 278 of this Act or under section 4 of the Immigration Act of February 5, 1917.

(b) The provisions of subsection (a)(4) respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States, or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having

been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter. The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a)(11) of this section.²

(c) An alien shall be deported as having procured a visa or other documentation by fraud within the meaning of paragraph (19) of section 212(a), and to be in the United States in violation of this Act within the meaning of subsection (a)(2) of this section, if (1) hereafter he or she obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than two years prior to such entry of the alien and which, within two years subsequent to any entry of the alien into the United States, shall be judicially annulled or terminated, unless such alien shall establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws; or (2) it appears to the satisfaction of the Attorney General that he or she has failed or refused to fulfill his or her marital agreement which in the opinion of the Attorney General was hereafter made for the purpose of procuring his or her entry as an immigrant.

(d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act.

(e) An alien, admitted as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or 101(a)(15)(G)(i), and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under subsection (a)(6) or (7) of this section.

² As amended by the Act of July 18, 1956 (70 Stat. 575).

APPENDIX C

CITATION GUIDE

(including all Sections of the Immigration and Nationality Act and subsequent enactments in the immigration and nationality field still in effect)

Act of
June 27, 1952
(Immigration and
Nationality Act)

Federal Code
Annotated 8

Section	66 Stat.	8 U. S. Code	Section
1	163	Note to 1101	Note to 1101
101	166	1101	1101
102	173	1102	1102
103	173	1103	1103
104	174	1104	1104
105	175	1105	1105
201	175	1151	1151
202	176	1152	1152
203	178	1153	1153
204	179	1154	1154
205	180	1155	1155
206	181	1156	1156
207	181	1157	1157
211	181	1181	1181
212	182	1182	1182
213	188	1183	1183
214	189	1184	1184
215	190	1185	1185
221	191	1201	1201
222	193	1202	1202
223	194	1203	1203
224	195	1204	1204
231	195	1221	1221
232	196	1222	1222
233	197	1223	1223
234	198	1224	1224
235	198	1225	1225
236	200	1226	1226
237	201	1227	1227
238	202	1228	1228
239	203	1229	1229
240	204	1230	1230
241	204	1251	1251
242	208	1252	1252
243	212	1253	1253
244	214	1254	1254
245	217	1255	1255
246	217	1256	1256
247	218	1257	1257
248	218	1258	1258
249	219	1259	1259
250	219	1260	1260

Act of
June 27, 1952
(Immigration and
Nationality Act)

Federal Code
Annotated 8

Section	66 Stat.	8 U. S. Code	Section
251	219	1281	1281
252	220	1282	1282
253	221	1283	1283
254	221	1284	1284
255	222	1285	1285
256	223	1286	1286
257	223	1287	1287
261	223	1301	1301
262	224	1302	1302
263	224	1303	1303
264	224	1304	1304
265	225	1305	1305
266	225	1306	1306
271	226	1321	1321
272	226	1322	1322
273	227	1323	1323
274	228	1324	1324
275	229	1325	1325
276	229	1326	1326
277	229	1327	1327
278	230	1328	1328
279	230	1329	1329
280	230	1330	1330
281	230	1351	1351
282	231	1352	1352
283	231	1353	1353
284	232	1354	1354
285	232	1355	1355
286	232	1356	1356
287	233	1357	1357
288	233	1358	1358
289	233	1359	1359
290	234	1360	1360
291	234	1361	1361
292	235	1362	1362
301	235	1401	1401
302	236	1402	1402
303	236	1403	1403
304	237	1404	1404
305	237	1405	1405
306	237	1406	1406
307	237	1407	1407
308	238	1408	1408
309	238	1409	1409
310	239	1421	1421
311	239	1422	1422
312	239	1423	1423
313	240	1424	1424
314	241	1425	1425
315	242	1426	1426
316	242	1427	1427

Act of
June 27, 1952
(Immigration and
Nationality Act)

Federal Code
Annotated 8

Section	66 Stat.	8 U. S. Code	Section
317	243	1428	1428
318	244	1429	1429
319	244	1430	1430
320	245	1431	1431
321	245	1432	1432
322	246	1433	1433
323	246	1434	1434
324	246	1435	1435
325	248	1436	1436
326	248	1437	1437
327	248	1438	1438
328	249	1439	1439
329	250	1440	1440
330	251	1441	1441
331	252	1442	1442
332	252	1443	1443
333	253	1444	1444
334	254	1445	1445
335	255	1446	1446
336	257	1447	1447
337	258	1448	1448
338	259	1449	1449
339	259	1450	1450
340	260	1451	1451
341	263	1452	1452
342	263	1453	1453
343	263	1454	1454
344	264	1455	1455
345	266	1456	1456
346	266	1457	1457
347	266	1458	1458
348	267	1459	1459
349	267	1481	1481
350	269	1482	1482
351	269	1483	1483
352	269	1484	1484
353	270	1485	1485
354	271	1486	1486
355	272	1487	1487
356	272	1488	1488
357	272	1489	1489
358	272	1501	1501
359	273	1502	1502
360	273	1503	1503
401	274	1106	1106
402	275	See Tables Volumes	See Tables Volumes
403	279	Note to 1101	Note to 1101
404	280	Note to 1101	Note to 1101
405	280	Note to 1101	Note to 1101
406	281	Note to 1101	Note to 1101
407	281	Note to 1101	Note to 1101

Act of
June 30, 1953
(Naturalization of
Persons Serving in
Armed Forces of
United States after
June 24, 1950)

Section	67 Stat.	8 U. S. Code	Federal Code Annotated 8 Section
1	108	1440a	1440a
2	109	1440b	1440b
3	110	1440c	1440c
4	110	1440d	1440d

Act of
August 7, 1953
(Refugee Relief
Act of 1953)

Section	67 Stat.	50 U. S. Code Appendix	Federal Code Annotated 8 Appendix Section
11(e)	405	1971i	1971i

Act of
June 18, 1954
(Philippine Traders)

Section	68 Stat.	8 U. S. Code	Federal Code Annotated 8 Section
—	264	1184a	1184a

Act of
July 20, 1954
(Naturalization of
Former Citizens
Who Lost
Citizenship by
Voting in
Occupied Japan)

Section	68 Stat.	8 U. S. Code	Federal Code Annotated 8 Section
—	495	Note to 1438	Note to 1438

Act of
September 3, 1954
(Sheepherders Act)

Section	68 Stat.	8 U. S. Code	Federal Code Annotated 8 Section
4	1145	1182a	1182a

Act of
September 3, 1954
(Loss of Nationality
of Certain Persons
Convicted of Crimes)

Section	68 Stat.	8 U. S. Code	Federal Code Annotated 8 Section
1	1146	Note to 1481	Note to 1481
2	1146	1481	1481

Act of
September 3, 1954
(Amending
Section 242(d))

Federal Code
Annotated 8

Section	68 Stat.	8 U. S. Code	Section
17	1232	1252(d)	1252(d)
18	1232	Note to 1451	Note to 1451

Act of
March 16, 1956
(Granting Benefits
of Section 301(a)
to Certain Children
of United States
Citizens)

Federal Code
Annotated 8

Section	70 Stat.	8 U. S. Code	Section
—	50	1401a	1401a

Act of
June 4, 1956
(Amending United
States Information
and Educational
Exchange Act, as
Amended)

Federal Code
Annotated 22

Section	70 Stat.	22 U. S. Code	Section
—	241	1446	1446

Act of
July 18, 1956
(Narcotic
Control Act)

Federal Code
Annotated 8

Section	70 Stat.	8 U. S. Code	Section
1	567	Note to 1182	Note to 1182
301(a)	575	1182	1182
301(b)	575	1251	1251
301(c)	575	1251	1251
401	576	Note to 1182	Note to 1182
402	576	Note to 1182	Note to 1182

Act of
September 11, 1957
(Eligible Orphans,
Refugee-Escapees,
Tuberculous and
Criminal Immigrants,
et al.)

Federal Code
Annotated

Section	71 Stat.	U. S. Code	Volume	Section
1	639	8 1101	8	1101
2	639	8 1101	8	1101
3	639	8 1153	8	1153
4	639	8 1205	8	1205
5	640	8 1182b	8	1182b
6	640	8 1182c	8	1182c

Act of
September 11, 1957
(Eligible Orphans,
Tuberculous and
Criminal Immigrants,
et al.)

			Federal Code Annotated	
Section	71 Stat.	U. S. Code	Volume	Section
7	640	8 1251a	8	1251a
8	641	8 1201a	8	1201a
9	641	8 1255a	8	1255a
10	642	8 Note to 1151	8	Note to 1151
11	642	8 1434	8	1434
12	642	8 Note to 1153	8	Note to 1153
13	642	8 1255b	8	1255b
14	643	8 Note to 1205	8	Note to 1205
15	643	50 Appendix Note to 1971a	50 Appendix	Note to 1971a
16	644	8 1401b	8	1401b

Act of
July 7, 1958
(Alaska Statehood)

			Federal Code Annotated 8
Section	72 Stat.	8 U. S. Code	Section
22	351	1101(a) (36)	1101(a) (36)
23	351	1182(d) (7)	1182(d) (7)
25	351	1421(a)	1421(a)
26	351	Note to 1455	Note to 1455

Act of
July 18, 1958
(Cancellation of
Departure Bonds)

			Federal Code Annotated 8
Section	72 Stat.	8 U. S. Code	Section
1	375	Note to 1184	Note to 1184
2	375	Note to 1184	Note to 1184
3	375	Note to 1184	Note to 1184

Act of
July 25, 1958
(Hungarian Refugees)

			Federal Code Annotated 8
Section	72 Stat.	8 U. S. Code	Section
1	419	Note to 1182	Note to 1182
2	419	Note to 1182	Note to 1182
3	419	Note to 1182	Note to 1182

Act of
August 8, 1958
(Amending
Section 249)

			Federal Code Annotated 8
Section	72 Stat.	8 U. S. Code	Section
--	546	1259	1259

Act of
August 20, 1958
(Naturalization of
Adopted Children
and Spouses of
Certain United
States Citizens
Performing Religious
Duties Abroad)

Federal Code
Annotated 8

Section	72 Stat.	8 U. S. Code	Section
1	687	1434	1434
2	687	1430	1430

Act of
August 21, 1958
(Amending
Section 245)

Federal Code
Annotated 8

Section	72 Stat.	8 U. S. Code	Section
1	699	1255	1255
2	699	Note to 1153	Note to 1153

Act of
September 2, 1958
(Relief for
Distressed Aliens)

Federal Code
Annotated

Section	72 Stat.	U. S. Code	Section
1	1712	—	—
2	1712	—	—
3	1713	—	—
4	1713	—	—
5	1713	—	—
6	1713	—	—
7	1713	—	—

Act of
March 18, 1959
(Hawaii Statehood)

Federal Code
Annotated 8

Section	73 Stat.	8 U. S. Code	Section
20(a)	13	1101(a) (36)	1101(a) (36)
20(b)	13	1182(d) (7)	1182(d) (7)
20(c)	13	1421(a)	1421(a)

Act of
August 4, 1959
(Amending
Sections
353, 354)

Federal Code
Annotated 8

Section	73 Stat.	8 U. S. Code	Section
1	274	Note to 1485	Note to 1485
2	274	1486	1486
3	274	1486	1486

Act of
September 9, 1959
(Eligible Orphans
and Tuberculous
Immigrants)

Federal Code
Annotated 8

Section	73 Stat.	8 U. S. Code	Section
1	490	1182c	1182c
2	490	1205	1205

Act of
September 22, 1959
(Quota Preferences,
Nonquota Immigrants,
Adopted Children)

Federal Code
Annotated 8

Section	73 Stat.	8 U. S. Code	Section
1	644	1153	1153
2	644	1153	1153
3	644	1153	1153
4	644	Note to 1153	Note to 1153
5(a)	644	1155	1155
5(b)	645	1155	1155
5(c)	645	Note to 1153	Note to 1153
6	645	Note to 1153	Note to 1153

Act of
July 14, 1960
(Refugees, Change
of Status,
Tuberculous Aliens,
Drug Addicts)

Federal Code
Annotated 8

Section	74 Stat.	8 U. S. Code	Section
1	504	Note to 1182	Note to 1182
2	504	Note to 1182	Note to 1182
3	505	Note to 1182	Note to 1182
4	505	Note to 1182	Note to 1182
5	505	—	—
6	505	—	—
7	505	1205(a)	1205(a)
8	505	1182(a)(23)	1182(a)(23)
9	505	1251(a)(11)	1251(a)(11)
10	505	1255(a)	1255(a)
11	506	Note to 1182	Note to 1182

Act of
September 14, 1960
(Agricultural
Workers)

Federal Code
Annotated

Section	74 Stat.	U. S. Code	Section
—	1021	—	—

APPENDIX D

LIST OF AMERICAN DIPLOMATIC AND CONSULAR OFFICES ISSUING VISAS*

(Status on November 1, 1960)

Unless otherwise indicated, American diplomatic and consular offices listed below issue all types of visas, i.e., immigrant and nonimmigrant visas, except that diplomatic visas are issued abroad at American Embassies and Legations only. Consulates may issue such visas only if specifically so authorized.

The insertion of "nonimm." after a diplomatic or consular office indicates that the particular office issues nonimmigrant visas only, except diplomatic visas.

The following symbols are used to indicate the status of each office: (C) for consulate; (CG) for consulate general; (E) for embassy; (L) for legation; and (M) for mission.

AFGHANISTAN

Kabul (E)

AMERICAN SAMOA

(See SAMOA, AMERICAN)

ARGENTINA

Buenos Aires (E)

AUSTRALIA

Canberra (E)—dipl. only

Adelaide (C)

Brisbane (C)

Melbourne (CG)

Perth (C)

Sydney (CG)

AUSTRIA

Vienna (E)

Salzburg (C)—nonimm.

BELGIUM

Brussels (E)—nonimm., incl. dipl.

Antwerp (CG)

BOLIVIA

La Paz (E)

Cochabamba (C)

BRAZIL

Rio de Janeiro (E)

Brasilia (Embassy Office)—
dipl. and official only

Belem (C)

Belo Horizonte (C)—nonimm.

Curitiba (C)—nonimm.

Porto Alegre (C)

Recife (C)

Salvador (C)

Santos (C)—nonimm.

Sao Paulo (CG)

BULGARIA

Sofia (L)

BURMA, Union of

Rangoon (E)

CAMBODIA, Kingdom of

Phnom-Penh (E)

CAMEROUN, State of

Yaounde (E)

CANADA

Ottawa (E)—nonimm., incl. dipl.

Calgary (C)

Edmonton (C)

Halifax (CG)

Montreal (CG)

Quebec (C)

St. John, New Brunswick (C)

St. John's, Newfoundland (CG)

Toronto (CG)

Vancouver (CG)

Windsor (C)

Winnipeg (CG)

CANAL ZONE

Balboa (no Consulate, but the
Executive Secretary is author-
ized to issue all types of visas.)

* Source: Visa Office, Department of State.

CEYLON

Colombo (E)

CHILE

Santiago (E)

Antofagasta (C)

CHINA

Taipei, Taiwan

(Formosa) (E)

COLOMBIA

Bogota (E)

Barranquilla (C)

Cali (C)

Medellin (C)

CONGO, Republic of

Brazzaville (E)

CONGO, Republic of the

Leopoldville (E)

Elisabethville (C)

COSTA RICA

San Jose (E)

CUBA

Havana (E)

Santiago de Cuba (C)

CZECHOSLOVAKIA

Prague (Praha) (E)—nonimm.,
incl. dipl., beneficiaries of non-
quota and relative preference
petitions and spouse and minor
children accompanying fourth
preference applicant.

CYPRUS

Nicosia (E)

DENMARK

Copenhagen (E)

DOMINICAN REPUBLIC

Ciudad Trujillo (C)

ECUADOR

Quito (E)

Guayaquil (CG)

EL SALVADOR

San Salvador (E)

ETHIOPIA

Addis Ababa (E)

Asmara (C)

FINLAND

Helsinki (E)

FRANCE AND POSSESSIONS

Paris (E)

Bordeaux (C)

Le Havre (C)—nonimm.

Lyons (C)—nonimm.

Marseille (CG)

Nice (C)—nonimm.

Strasbourg (C)—nonimm.

Departments, Overseas and Trust Territories:

Algiers, Algeria (CG)

Martinique, French West Indies
(C)**GERMANY**

Bonn (E)—nonimm., incl. dipl.

Berlin (M)

Bremen (CG)—nonimm.

Dusseldorf (CG)—nonimm.

Frankfort on the Main (CG)

Hamburg (CG)

Munich (CG)

Stuttgart (CG)—nonimm.

GHANA

Accra (E)

GREAT BRITAIN, NORTHERN IRELAND AND POSSESSIONS

London (E)

Belfast, Northern Ireland (CG)

Birmingham (C)—nonimm.

Cardiff, Wales (C)—nonimm.

Edinburgh, Scotland (C)—
nonimm.

Glasgow, Scotland (C)

Liverpool, England (C)

Manchester (C)—nonimm.

Southampton (C)—nonimm.

Possessions**European:**

Valletta, Malta (C)

Asian:

Aden (C)

Hong Kong (CG)

Singapore (CG)

Suva, Fiji Islands (C)

African:

Dar-es-Salaam, Tanganyika,

East Africa (CG)—nonimm.

Freetown, Sierra Leone (C)

Kampala, Uganda, East Africa
(CG)—nonimm.Nairobi, Kenya, East Africa
(CG)

- Salisbury, Southern Rhodesia (CG)
- American:**
- Barbados, British West Indies (C)
- Belize, British Honduras (C)
- Georgetown, British Guiana (C)
- Hamilton, Bermuda (CG)
- Kingston, Jamaica, British West Indies (CG)
- Nassau, Bahamas (CG)
- Port-of-Spain, Trinidad, British West Indies (CG)
- GREECE**
- Athens (E)
- Thessaloniki (Salonika) (CG)
- GUATEMALA**
- Guatemala (E)
- GUINEA, Republic of**
- Conakry (E)
- HAITI**
- Port-au-Prince (E)
- HONDURAS**
- Tegucigalpa (E)
- San Pedro Sula (C)
- HUNGARY**
- Budapest (L)—nonimm., incl. dipl., beneficiaries of nonquota and relative preference petitions.
- ICELAND**
- Reykjavik (E)
- INDIA**
- New Delhi (E)
- Bombay (CG)
- Calcutta (CG)
- Madras (CG)
- INDONESIA**
- Jakarta (E)
- Medan (C)—nonimm.
- Surabaya (C)—nonimm.
- IRAN**
- Tehran (E)
- Isfahan (C)—nonimm.
- Khorramshahr (C)—nonimm.
- Meshed (C)—nonimm.
- Tabriz (C)—nonimm.
- IRAQ**
- Baghdad (E)
- Basra (C)—nonimm.
- IRELAND (EIRE)**
- Dublin (E)
- Cork (C)—nonimm.
- ISRAEL**
- Tel Aviv (E)
- Haifa (C)—nonimm.
- ITALY**
- Rome (E)—nonimm., incl. dipl.
- Florence (C)—nonimm.
- Genoa (CG)
- Milan (CG)—nonimm.
- Naples (CG)
- Palermo (CG)
- Trieste (C)—nonquota and nonimm.
- Turin (C)—nonimm.
- Venice (C)—nonimm.
- Possession:**
- Mogadiscio, Trust Territory of Somaliland (CG)
- IVORY COAST, Republic of**
- Abidjan (E)
- JAPAN**
- Tokyo (E)
- Fukuoka (C)
- Kobe-Osaka (CG)
- Nagoya (C)
- Naha, Okinawa (Consular Unit)
- Sapporo (C)
- Yokohama (CG)
- JORDAN**
- Amman (E)
- KOREA**
- Seoul (E)
- KUWAIT**
- Kuwait (C)
- LAOS**
- Vientiane (E)
- LEBANON**
- Beirut (E)
- LIBERIA**
- Monrovia (E)
- LIBYA**
- Tripoli (E)
- Benghazi (Embassy Office)—nonimm., incl. dipl.

LUXEMBOURG

Luxembourg (E)—nonimm.,
incl. dipl.

MALAGASY, Republic of

Tananarive (E)

MALAYA, Federation of

Kuala Lumpur (E)
Penang (C)—nonimm.

MALI, Republic of

Bamako (E)

MEXICO

Mexico, D. F., (E)
Ciudad Juarez, Chihuahua (C)
Guadalajara, Jalisco (CG)
Matamoros, Tamaulipas (C)—
nonimm.
Merida, Yucatan (C)
Mexicali, Baja California (C)—
nonimm.
Monterrey, Nuevo Leon (CG)
Nogales, Sonora (C)
Nuevo Laredo, Tamaulipas (C)
—nonimm.
Piedras Negras, Coahuila
(C)—nonimm.
Tampico, Tamaulipas (C)—
nonimm.
Tijuana, Baja California (CG)
Veracruz, Veracruz (C)—nonimm.

MOROCCO

Rabat (E)—nonimm., incl. dipl.
Casablanca (CG)
Tangier (CG)

NEPAL, Kingdom of

Katmandu (E)—nonimm., incl.
dipl.

**NETHERLANDS AND
POSSESSIONS**

The Hague (E)—dipl. only
Amsterdam (CG)—nonimm.
Rotterdam (CG)
Possessions:
Aruba, Netherlands West In-
dies (C)
Curacao, Netherlands West
Indies (CG)
Paramaribo, Surinam
(Netherlands Guiana) (C)

NEW ZEALAND

Wellington (E)
Auckland (C)

NICARAGUA

Managua (E)

NIGERIA

Lagos (E)
Kaduna (C)—nonimm.

NORWAY

Oslo (E)

PAKISTAN

Karachi (E)
Dacca (CG)
Lahore (CG)
Peshawar (C)—nonimm.

PANAMA

Panama (E)

PANAMA CANAL ZONE
(See CANAL ZONE)**PARAGUAY**

Asuncion (E)

PERU

Lima (E)

PHILIPPINES, Republic of the

Manila (E)
Cebu (C)—nonimm.

POLAND

Warsaw (E)

PORTUGAL AND POSSESSIONS

Lisbon (E)
Oporto (C)
Ponta Delgada, Sao Miguel,
(St. Michael), Azores (C)
Possessions:
Lourenco Marques,
Mozambique (CG)
Luanda (Loanda), Angola,
Africa (C)

RUMANIA

Bucharest (L)

SAMOA, AMERICAN

Pago Pago (Office of Governor)

SAUDI ARABIA

Jidda (E)
Dhahran (CG)

SENEGAL, Republic of

Dakar (E)

SPAIN

Madrid (E)
Barcelona (CG)
Bilbao (C)

Seville (CG)
 Valencia (C)—nonimm.
 Vigo (C)—nonimm.

SUDAN

Khartoum (E)

SWEDEN

Stockholm (E)
 Goteborg (CG)

SWITZERLAND

Berne (E)—nonimm., incl. dipl.
 Basel (C)—nonimm.
 Geneva (CG)—nonimm.
 Zurich (CG)

THAILAND

Bangkok (E)

TOGO, Republic of

Lome (C)

**TRUST TERRITORIES OF THE
PACIFIC ISLANDS***

Marshall Islands District
 (district administrator at
 Majuro, Marshall Is.)
 Palau District (district adminis-
 trator at Koror, Western Caro-
 line Is.)
 Ponape District (district admin-
 istrator at Ponape, Eastern
 Caroline Is.)
 Rota District (district adminis-
 trator at Rota, Mariana Is.)
 Saipan District (Naval Adminis-
 trator at Saipan, Mariana Is.)
 Truk District (district adminis-
 trator at Truk, Eastern Caro-
 line Is.)
 Yap District (district administra-
 tor at Yap, Western Caroline
 Is.)

TUNISIA

Tunis (E)

TURKEY

Ankara (E)
 Iskenderun (C)—nonimm.
 Istanbul (Constantinople) (CG)
 Izmir (Smyrna) (CG)

UNION OF SOUTH AFRICA

Pretoria (E)—dipl. and official
 only
 Capetown (CG)
 Durban, Natal (C)
 Johannesburg, Transvaal (CG)
 Port Elizabeth, Cape Province
 (C)—nonimm.

**UNION OF SOVIET SOCIALIST
REPUBLICS**

Moscow (E)

UNITED ARAB REPUBLIC

Cairo (E)
 Aleppo (CG)
 Alexandria (CG)—nonimm.
 Damascus (CG)
 Port Said (C)—nonimm.

URUGUAY

Montevideo (E)

VENEZUELA

Caracas (E)
 Maracaibo (C)
 Puerto la Cruz (C)

VIET-NAM (VIETNAM)

Saigon (E)

YEMEN, Kingdom of

Taiz (L)—nonimm., incl. dipl.

YUGOSLAVIA

Belgrade (E)
 Sarajevo (C)—dipl. and official
 Zagreb (CG)—nonimm.

* No consulates exist in the Trust Territories but the district administrator issues all types of visas.

APPENDIX E

LIST OF OFFICES OF THE IMMIGRATION AND NATURALIZATION SERVICE DEPARTMENT OF JUSTICE*

Listed below are the offices of the Immigration and Naturalization Service including district offices located in the United States and all offices of the Service located abroad.

The functions of immigration officers at different office levels are discussed in Chapter 3 and the chapters relating to their substantive responsibilities. Immigration officers stationed abroad participate in the administration of Sections 5 and 7 of the Act of September 11, 1957, authorizing the Attorney General to admit certain otherwise inadmissible immigrants;¹ Section 4 of the same act, as amended, requiring the Attorney General to investigate and act on petitions by United States citizens seeking to adopt eligible orphans;² and Section 2 of the Act of July 14, 1960, authorizing the parole into the United States of refugee-escapees.³ Immigration officers stationed in certain adjacent islands and in contiguous territory also preinspect passengers destined for the United States.⁴

CENTRAL OFFICE

119 D Street, N.E.
Washington 25, D.C.

REGIONAL OFFICES

Northeast Region. Regional Commissioner: Burlington, Vermont.

District Offices in Northeast Region:

Boston, Massachusetts	Newark, New Jersey
Buffalo, New York	New York, New York
Hartford, Connecticut	Portland, Maine
	St. Albans, Vermont

Southeast Region. Regional Commissioner: Richmond, Virginia.

District Offices in Southeast Region:

Atlanta, Georgia	New Orleans, Louisiana
Baltimore, Maryland	Philadelphia, Pennsylvania
Cleveland, Ohio	San Juan, Puerto Rico
Miami, Florida	Washington, D.C.

Northwest Region. Regional Commissioner: St. Paul, Minnesota.

District Offices in Northwest Region:

Anchorage, Alaska	Kansas City, Missouri
Chicago, Illinois	Omaha, Nebraska
Detroit, Michigan	Portland, Oregon
Helena, Montana	Seattle, Washington
	St. Paul, Minnesota

* Source: Immigration and Naturalization Service.

¹ See ch. 34, § 3.

² See ch. 52, § 2.

³ See ch. 51, § 6.

⁴ See ch. 37, § 2(c).

Southwest Region. Regional Commissioner: San Pedro, California.
District Offices in Southwest Region:

Dallas, Texas	Los Angeles, California
Denver, Colorado	Phoenix, Arizona
El Paso, Texas	San Francisco, California
Honolulu, Hawaii	San Antonio, Texas

IMMIGRATION OFFICES OUTSIDE THE UNITED STATES

Western Hemisphere

Location:	Jurisdiction:
Bahamas: Nassau	Bahamas
Bermuda: Hamilton	Bermuda
Canada: Montreal	Canada
Ottawa	Ottawa
Cuba: Havana	Cuba
	Caribbean Islands
	South America
Mexico: Mexico City	Mexico
Monterrey	Central America
Tijuana	Northeastern area of Mexico
	Northwestern area of Mexico

Europe

Location:	Jurisdiction:
Germany: Frankfurt	Albania
	Austria*
	Germany
	Hungary
	Benelux
	Iceland
	Bulgaria
	Ireland
	Scandinavia
	Poland
	(including
	Rumania
	Finland)
	Switzerland
	Czechoslovakia
	United Kingdom
	France
	U.S.S.R.
	Yugoslavia
Greece: Athens	Aden
	Jordan
	Cyprus
	Kuwait
	Greece
	Lebanon
	Iran
	Saudi Arabia
	Iraq
	Turkey
	Israel
	United Arab Republic
	Yemen
Italy: Naples	The following Italian provinces:
	Avellino
	Foggia
	Bari
	Lecce
	Benevento
	Matera
	Brindisi
	Napoli
	Caserta
	Potenza
	Catanzaro
	Salerno
	Cosenza
	Taranto
Palermo	Sicily
Rome	Africa (except Egyptian region)
	Italy (other than Sicily and the provinces
	under the jurisdiction of Naples, Italy)
	Malta

* An immigration office at Vienna handles only cases of refugee-escapees in Austria.

Location:	Jurisdiction:
Rome (continued)	Portugal (including insular possessions in the Atlantic) Spain
Location:	Far East
Hong Kong (British Crown Colony)	Jurisdiction:
Japan: Tokyo	Formosa Hong Kong and adjacent islands
Philippines: Manila (District Office)	Japan Korea Okinawa
	All of continental Asia lying to the east of the western borders of Afghanistan and Pakistan, and all countries in the Pacific area, other than areas within the jurisdiction of the offices at Tokyo and Hong Kong Australia New Zealand

APPENDIX F

BOUNDARIES OF CERTAIN QUOTA AREAS

The following description, adapted from the official publication, *Immigration Quota Areas According to the Immigration and Nationality Act of the United States*, lists areas whose present international boundaries are not controlling for the determination of quota chargeability and other areas where there may be doubt as to their limits for quota purposes. (See Chapter 9, § 1(a))

Arabian Peninsula. A "quota area" comprising Kuwait, Bahrein, Qatar, the Trucial Sheikhdoms, and all other portions of the peninsula not accorded a quota or subquota.

Bulgaria. The 1938 boundaries.

China. Includes Manchuria, Inner Mongolia, Outer Mongolia, Sinkiang, and Tibet, within the 1938 boundaries of China; and also Taiwan.

Czechoslovakia. The January 1938 boundaries (therefore includes the Sudetenland areas, and Carpathian Ruthenia).

Danzig, Free City of. The 1938 boundaries.

Estonia. The 1938 boundaries.

Ethiopia. Includes Eritrea.

Finland. The 1938 boundaries.

France. Includes the thirteen departments of the northern part of the Delegation-General of Algeria, long politically a part of metropolitan France, but not the Saharan departments in southern Algeria. Each of the "overseas departments" created in 1946 (French Guiana, Guadeloupe, Martinique, and Réunion), each of the "overseas territories" (Comoro Islands, French Polynesia, French Somaliland, French Southern and Antarctic Territories (Kerguelen Is., etc.), New Caledonia and dependencies, Saint Pierre and Miquelon) and the condominium of New Hebrides is regarded as within the intent of Sec. 202(c) applying to a "colony or other component or dependent area." (The Asia-Pacific triangle provisions apply to the French colonial and other dependent areas in the Asia-Pacific triangle.)

Germany. The 1938 boundaries.

Great Britain and Northern Ireland. The colony or other dependent area to which the provisions of Sec. 202(c) apply individually correspond to official British usage. For example, the limitation of 100 each, within the quota of Great Britain and Northern Ireland, will apply to each of the following: Antigua,* Bahamas, Barbados,* Bermuda, British Virgin Islands, Dominica,* Grenada,* Jamaica,* Montserrat,* St. Christopher,* St. Lucia,* St. Vincent,* and Trinidad and Tobago.* (The Asia-Pacific triangle provisions apply to the British colonial and other dependent areas in the Asia-Pacific triangle.)

Greece. Includes the Dodecanese, as ceded by Italy in 1947.

Hungary. The 1938 boundaries.

India. The 1950 boundaries; the state of Junagadh, and Jammu and Kashmir included, at least for the present.

* Colonies included within the Federation of The West Indies.

- Israel. Includes that part of Jerusalem under Israeli administration; excludes the "Gaza strip," Jordan-occupied Palestine, and the demilitarized and neutral zones.
- Italy. The 1950 boundaries; therefore excludes the Dodecanese, Eritrea, Libya, but includes the area of Italian administration in the former Free Territory of Trieste.
- Japan. Japan proper, the Habomai group and Shikotan; and the Ryukyu Islands not under U. S. administration.
- Jordan. Includes only territory east of the Jordan River.
- Korea. Includes all Korea.
- Latvia. The 1938 boundaries.
- Lithuania. The 1938 boundaries.
- Morocco. Includes the former French and Spanish zones in Morocco, and former Tangier International Zone. (See also "Spain.")
- Pakistan. Does not include Jammu and Kashmir, and the state of Junagadh, at least for the present.
- Palestine. Comprises that part of Jerusalem under Arab administration, Jordan-occupied Palestine, the various demilitarized and neutral zones, and the "Gaza strip."
- Poland. The 1938 boundaries.
- Portugal. Includes Madeira and the Azores as integral parts of Portugal. The provisions of Sec. 202(c) apply to the Cape Verde Islands and to each of the overseas provinces in Africa (Portuguese Guinea, São Tomé and Príncipe, Angola, and Mozambique) (but the Asia-Pacific triangle provisions apply to the overseas provinces in Asia-Portuguese India [Goa, Damao, and Diu], Macao, and Portuguese Timor).
- Rumania. Excludes Bessarabia and that part of Bucovina ceded to the Soviet Union in 1940. Includes southern Dobruja.
- Somali Republic. Includes the former trust territory of Somaliland and the former protectorate of British Somaliland.
- Spain. Includes, as integral parts of Spain, the Balearic Islands, the Canary Islands, and the following areas of Spanish sovereignty in North Africa: Alhucemas, Ceuta, Islas Chafarinas, Melilla, Peñón de Velez.
- Union of Soviet Socialist Republics. The 1938 boundaries, plus Bessarabia and that part of Bucovina ceded by Rumania in 1940.
- Viet-Nam. Coterminous with the three former French areas of Tongking, Annam and Cochinchina, in Indochina.
- Yugoslavia. Includes the area of Yugoslav administration in the former Free Territory of Trieste.

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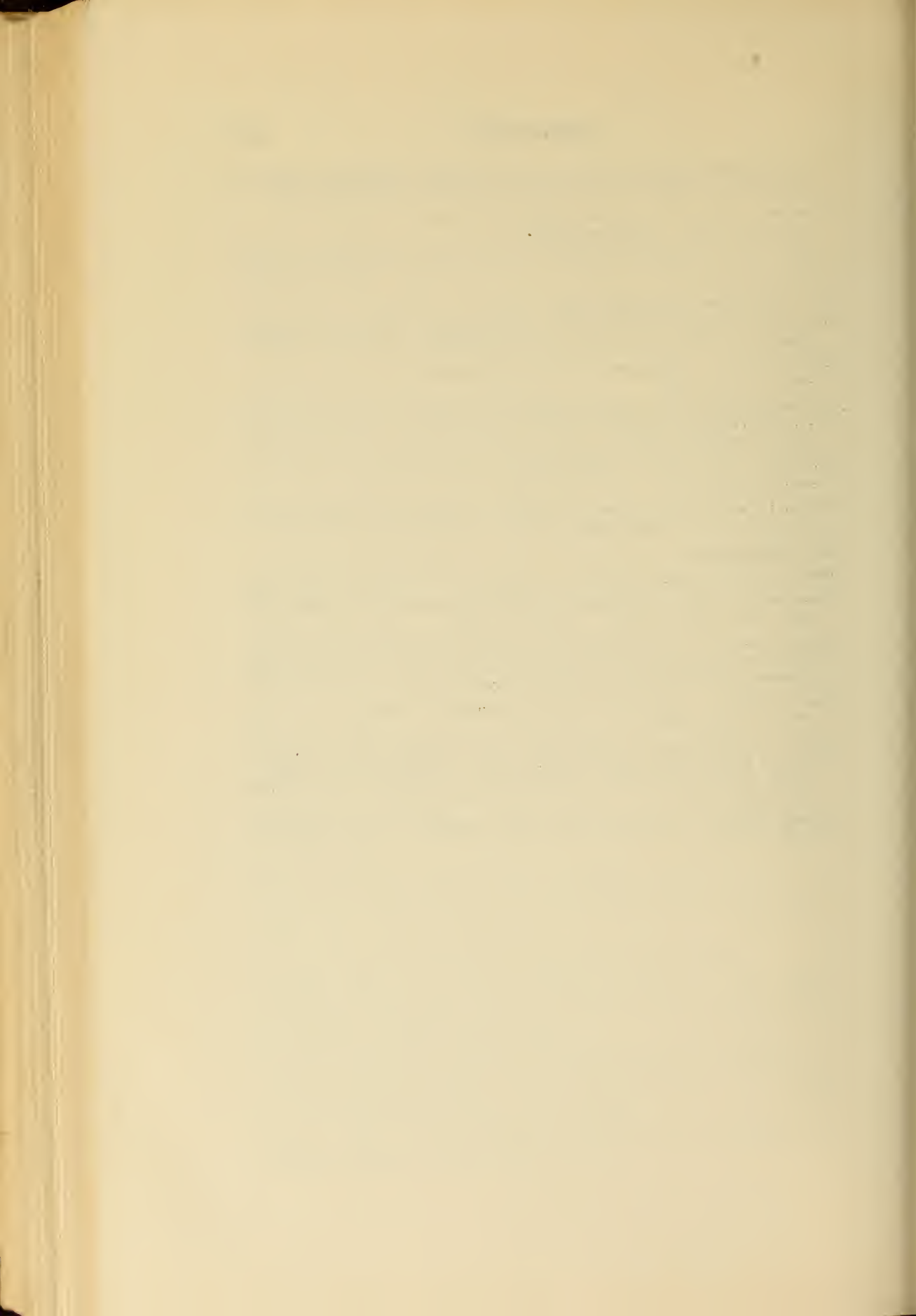
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